MASSACHUSETTS

ECCLESIASTICAL LAW.

BY

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PREFACE.

In this volume I have attempted to collect, and arrange in convenient form for reference, the Ecclesiastical Laws of Massachusetts, which lie scattered in profusion among the statutes and reports of the Commonwealth.

In order to secure completeness, reports of legislative committees, town histories, church histories, reports of councils, sermons, periodicals, and biographies have been examined. Something has also been done toward tracing our present ecclesiastical laws and usages to English sources; and, with a view of making the work more generally useful in all parts of the Union, decisions of other States, and denominational controversies in which Massachusetts had no special part, have been cited.

Legal and clerical friends, of competent learning, have aided me with valuable suggestions. Our late honored Chief Justice very kindly allowed me to read to him a large part of the manuscript. With these precautions, I trust I have secured reasonable accuracy in the points that have risen during the rapid growth of our numerous Congregational churches; especially in those conflicts in

regard to doctrine and polity that marked the decline of the State connection.

The reader will see, at a glance, that the churches of Massachusetts owe their extensive participation in the legal discussions that have taken place to a connection with the State, which was very naturally formed in their behalf, during colonial times. He will trace, with satisfaction, the manner by which painful decisions of courts have led to a complete separation between the churches and the State; placing the Congregational churches of the Commonwealth on the safe footing of churches in other New England States, which have made less figure in courts and legislatures.

I shall be pleased if the details here collected tend to do honor to the upright and learned judges of Massachusetts, and increase our reverence for the simple faith and polity of our fathers, — encouraging, meanwhile, those reasonable hopes, entertained by many Christian men, that Congregational churches are to be the churches of the future.

E. B.

Boston, Nov. 21, 1865.

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MASSACHUSETTS ECCLESIASTICAL LAW.

CHAPTER I.

America dedicated to Religious Uses — Care of the Puritans in founding Towns, Precincts, Parishes — Their Bounds — Setting off Parishioners by Special Acts — Ecclesiastical Jurisdiction of the General Court — Danvers, Hadley, Springfield, Andover.

§ 1. At the discovery of our Continent, Columbus consecrated it to religious uses with the striking rites of the Roman Catholic Church. "In all countries visited by your highnesses' ships," he writes to Ferdinand and Isabella, "I have caused a high cross to be erected on every headland, and have proclaimed to every nation that I have discovered the lofty estates of your Highnesses. I also tell them all I can respecting our holy faith, and the belief in the holy Mother Church, which has its members in all the world; and I speak to them of the courtesy and nobleness of all Christians, and of the faith they have in the Holy Trinity."[1]

Admirals of the established Church of England were no less elaborate in their rites and ceremonies in the countries which they discovered at the far north. "After a storm in Hudson's Bay," says

[1] Select Letters of Columbus.

Frobisher, in 1578, "when each had ripped up their sundry fortunes and perils past, they highly praised God; and altogether, upon their knees, gave due, humble, and hearty thanks; after this, they listened to a godly sermon by master Wolfall. He, on another occasion, administered the communion after a godly sermon, which celebration of the divine mystery was the first sign, seal, and confirmation of Christ's name, death, and passion ever known in these quarters." [1]

Obeying impulses which stirred in the hearts of all who came to America, the Pilgrims of Plymouth and Puritans of Massachusetts Bay dedicated their land by providing themselves with godly ministers and arranging for their permanent support. Secretary Washburn put ministers at the very head of a list of persons and things to be sent out in the company's ships. In 1629, it is resolved that the support of ministers, "together with convenient churches and other charges," be indifferently borne, one half by the company's joint stock for seven years, the other half by the planters; and the year after, an assessment of sixty pounds is levied on the important settlements of Boston, Watertown, Charlestown, Roxbury, Medford, Winnissimmet, in proportion to their means, for the support of Mr. Wilson and Mr. Phillips. [2]

§ 2. The "high cross on the headland." The occasional sermon would not answer the great

[1] 3 Hakluyt, 116.

[2] 1 Mass. Rec.

ends of the colonists of Plymouth and Massachusetts Bay who came to found a "plantation religious." They did not trust their interests to the spontaneous care of those who were willing to settle among them. A committee of the General Court looked after the quality of the settlers, and the quality of their belief, as well as the location of each company of settlers. The pious care of the Commonwealth is well expressed by the ordinance of 1679, requiring the council or county courts to appoint "an able and discreet committee, at the charge of the people, intending to plant, to view and consider the place; to direct in what form, way, and manner, such town should be settled; having principal respect to nearness and conveniency of habitation, security against enemies, more comfort for Christian communion, enjoyment of God's worship, and civility with other good ends." [1]

§ 3. Ecclesiastical and civil boundaries were alike denoted by the word town. Throughout the Old Colony and Massachusetts records, parishes are not mentioned as ecclesiastical divisions, although the term was familiar at that time, as England was then divided into nine thousand parishes. The terms parish, precinct, and district came into use after the colonial times, from the English ecclesiastical law.

In the province laws our familiar and convenient distinction between town and parish was lit-

[1] 5 Mass. Record, 214 — Com. *v.* Roxbury, 9 Gray. The Colony ordinance limiting the size of towns on the seaboard to a distance of eight miles inland, was in accordance with the small size of the early Diocese. 14 Church Review, 605. For Virginia Colonies do. 14, 93

tle known. Town, precinct, parish, and district were terms indiscriminately used both for ecclesiastical and civil purposes, as any one may see by examining the provincial statutes from 1692 to 1753, cited below, which describe the growth and transformation of precincts, parishes, and districts into towns.[1]

At the breaking out of the Revolution, this transformation into towns, with the privilege of sending a member to the General Court, is frequent. About this time the terms precinct and parish begin to be employed in a sense more strictly ecclesiastical.[2] Thus the boundaries of parishes are "confirmed" ecclesiastically; their inhabitants are made a "body corporate;" their engagements of a "parochial nature" are provided for; and, in case of a division, the rest of the town became "the first parish." [3]

§ 4. The division of substantial towns into two or more parishes was by no means a matter of course; it must be "legally and regularly" done, by order of the General Court. The ecclesiastical metes

[1] St. 1694, ch. 5; 1702, ch. 4; 1718, ch. 6; 1720, ch. 8, 10; 1722, ch. 5; 1723, ch. 3; 1730, ch. 1; 1731, ch. 1; 1733, ch. 1; 1743, ch. 11; 1753, ch. 3.

[2] In St. 1780, erecting Natick District into a town, the statute of 1775 is cited, which was intended to counteract a former provincial law that refused representatives to districts.

Tithing-men in England still perambulate the bounds of the parish, and the records are kept by the bishop. The bounds of some London parishes are not yet settled.

[3] St. 1786, ch. 10, following St. 1754: and partly St. 1718, ch. 6. In the statute recognizing the civil divisions as ecclesiastical, the General Court seems to have followed the Council of Constantinople, A. D. 381, which was the first to confirm them. 1 Church Review, 336.

and bounds were as exact as the civil. Indeed, the boundaries of the commonwealth itself, long after the Revolution, were not so well defined as those of parishes, precincts, and districts.

It would be difficult to say which was the first parish created by law in Massachusetts. The West Parish in Andover was probably the very last purely ecclesiastical parish in the commonwealth. It was established March 3, 1827, and its bounds are carefully given thus: Beginning at a stake and stones, thence northerly to a hop-kiln, thence easterly to a white oak-tree, thence along the Shawshine, thence along the Merrimack. All inhabiting within those limits were exempt from paying their taxes to the South Parish in Andover.[1]

Time has superseded these ecclesiastical boundary toils of our ancestors, which they derived from England. We now look upon them and the mass of legislation they required, as the traveller regards the old world masonry of fortified towns.[2]

West Andover will furnish an illustration of a territorial parish, the lands lying contiguous, the earliest kind of parish known in Massachusetts.

Another description of parish, introduced after the Revolution, included men with "their lands and estates and polls," without reference to contiguity, and these were called poll parishes.[3]

[1] St. 1826, ch. 106.

[2] For acts since 1830, as to the boundaries of Synods and Presbyteries, see Moore's Digest, Dexter's Congregationalism, 288, note.

[3] Amherst, Stat. 1783.

Alongside the ancient territorial parish (or its equivalent, the precinct), a third less regular association sprang up, having no reference to lands and estates, called sometimes a poll parish, but more commonly a religious society. We have then the various ecclesiastical terms of parish, precinct, district, poll parish, and religious society in common use after the revolution. In our own day, however, the religious society bids fair to supersede all the older terms heretofore in use.

§ 5. From the first settlement of Massachusetts, the principle upon which the General Court proceeded in supporting the gospel was that of the ecclesiastical law, which had been in force in England long before the Reformation; to wit, that every man in the town, parish, precinct, or district, with his lands, was to contribute in the town, parish, or precinct where he lived unless specially exempt. At a later time, when a parishioner found it convenient to attend another meeting in the same town or an adjoining town, he applied to the General Court, and he was set off with his land. David Barnard, by a special act in 1804, is set off from the North Parish of Andover to the South, "always provided however that said David first paid the taxes already due to the North Parish." Such transfers of men by special act are frequent; at least half a dozen per annum, until the law of 1824, ch. 106, made an application to the General Court unnecessary.[1]

[1] The power of the General Court to transfer to a dissenting society an individual who had no religious scruples against the Congregational

The Supreme Judicial Court were very nice in applying these tax and parish laws. They held that the ward was to be taxed wherever his guardian attended church, without reference to the ward or his parents; that the exemption of David Barnard and his land lasted only during his lifetime; and the occupant after him must obtain a new special act of exemption, if he did not wish to pay his tax to the North Parish of Andover.[1]

In the early times it was not easy to be "legally set off," or "regularly set off," for parishes, precincts, or individuals. A strong case had to be made out to the satisfaction of the Committee of the General Court. Many were the remonstrances and counter remonstrances before Salem Village, now Danvers, could be set off from Salem, and have preaching of its own. West Hadley had a great struggle before it could be set off from Hadley; West Springfield from Springfield. They had to explain to the General Court their ability to support a minister, to convince the Court that it was dangerous to cross the river in an open boat to go to meeting: mere inconvenience did not weigh much in those days.

The five huge manuscript volumes in the Secretary of State's office prove that there was exercised a minute superintendence, after the manner of the English Parliament and Courts Spiritual, in answer to petitions of towns and individuals, on all man-

was questioned, but overruled by Chief Justice Parsons in Thaxter *v.* Jones, 4 Mass. 570, 1808.

[1] Kingsbery *v.* Slack, 8 Mass. 154. Baldwin *v.* Fitchburg, 8 Pick. 494.

ner of ecclesiastical subjects. The petitions of towns to be furnished with ministers, are not infrequent. A much larger number ask aid in supporting ministers; private persons ask leave to attend their favorite preacher in neighboring towns; and prisoners beg leave to attend preaching anywhere.[1]

The town of Andover will serve to illustrate the various spiritual solicitudes that occupied legislators and royal governors in those days. As early as 1681, certain inhabitants petition for aid in settling a controversy about a meeting-house which was much needed in the south part of the town of Andover. Again, in 1707, they petition that the differences about the meeting-house be resettled. In 1708, the South Parish is allowed to build a meeting-house, provided they lay out certain lands for the minister's use, and build him a parsonage. In October, 1710, the South parish humbly present to the Hon. Wm. Shirley (his Majesty's governor), that they had built a suitable parsonage with four chimneys and four chambers; but the minister, the Rev. Mr. Bernard of the North Parish, refused to make up his mind which parish he would serve, the North or the South; and what should they do? Thereupon Mr. Bernard is required to declare his mind before the 11th of December, otherwise the South Parish might employ any minister they chose.

The Royal Governor of the Province, with his Council and Aids, was quite a symbol of the eccle-

[1] Fifty grants to aid feeble churches were made between 1693 and 1711. None are found after 1711. 1 Cong. Quarterly, 57, 163.

siastical as well as civil dignity that resided in the General Court of those days, attending, in state, councils of churches and ordinations of ministers, quite unlike a modern governor of Massachusetts, who is confined to cattle-shows, musters, commencements, and other terrestrial gatherings.[1]

This mingling of the civil and ecclesiastical in our early history needs no apology; it implies no usurpation of power. The Confederate Commissioners of the New England Colony, from 1643 to 1667, maintained a careful supervision of the religious condition of each colony. They distributed Bibles, they conducted missions to the Indians, on a scale unknown before their time, besides settling the very difficult question of public law relating to war, boundary, and jurisdiction, on high Christian principles, without precedents to guide them.[2]

[1] The presiding of the Governors of Massachusetts and Connecticut, in the year 1865, over general councils, is a recognition of the ancient era. Ordinations, in 1759, occasioned so much "feasting, jollity, and revelling," that the Council addressed the clergy a circular on the subject. Hist. Socy.

[2] 9 and 10 Plymouth Records; 2 Palfrey's New England, *passim*.

CHAPTER II.

The Support of the Gospel — Towns fined for neglecting it — Inhabitants for not attending Worship — Taxes on Persons, Lands, Corporations — How Collected — Members liable for Parish Debts — Haverhill — Who are Parish Members.

§ 1. In colonial times, when little was known of toleration, when every Protestant State in Europe had its State Church, it was natural for the settlers of Massachusetts Bay, all Englishmen, to adopt a modification of the English law of Church and State suited to their circumstances; to enact, as they did in 1638, that "every inhabitant who should not voluntarily contribute to all charges, both in Church and Commonwealth, proportionably, according to his ability, should be compelled thereto by assessment." [1]

This enactment was rendered more specific by later statutes. There were few colonists, when the Revolution broke out, better versed in tax laws than the people of Massachusetts. Their system of ecclesiastical taxation had the merit of being definite and impartial, from the first; levied with all the impartiality, at least, of town taxes in our day.[2]

[1] The English law of church rates under 13 Edward I., *circumspecte agitis*, and under the High Commission Court founded by St. 1. Elizabeth, were not favorable models to work from. Velley *v.* Gosling, 1 Ecc. Cases 479.

[2] As to early support of ministers, see 1 Cong. Quar. 158. For an

As early as 1637, we find the General Court authorizing the Town of Newbury to raise sixty pounds by tax on all inhabitants, "by an equal and proportionable rate, having respect to the lands and personal estate of those absent and those dwelling there." The object was to pay for building of houses for their ministers; and the reason it was levied is expressed by the statute, as well as it ever has been since, "because such as are of the church there are not able to bear the whole charge, and the rest of the inhabitants do or may enjoy equal benefit with them, yet they do refuse, against all right and justice, to contribute with them."

The suggestion came from Massachusetts, which induced the Confederate Commissioners of the United Colonies at Hartford, at their second meeting in 1644, to adopt the following recommendations to all the General Courts of the Colonies of New England: "That those who are taught in the word in the several plantations be called together, and every man voluntarily set down what he is willing to allow to that end and use; and if any man refuse to pay a meet proportion that he then be rated by authority in some just and equal way. And if, after this, any man withhold or delay the payment, the civil power be exercised as in other just debts."[1]

The Massachusetts laws of 1652 required "all towns to be supplied with a Minister, a Meeting

examination of the tax laws of Massachusetts, see 1st vol. Am. Statistical Assn. The attempts of Randolph and Andros to subvert the Massachusetts tax system are described, 3 Palfrey.

[1] 9 Plymouth Records, 20, also Trumbull's Col. Rec.

House, and a Parsonage" — and all inhabitants to be taxed for their support.[1] This was not all. In case of defect in any congregation or town, in providing "for the settled and encouraging maintenance of ministers," the County Court ordered what maintenance should be allowed, and issued warrants to the selectmen to assess the inhabitants, which assessment the constables were to collect like any other town taxes.[2]

§ 2. Any town feeling itself burdened by the County Court's assessment could appeal to the Great and General Court. The General Court, as early as 1654, held it to be their "great duty to provide that all places and people within their gates should be supplied with an able and faithful minister of God's holy word." Presidents of County Courts and Grand Juries were to present all abuses and neglects, and attend to the orders of the General Court concerning the maintenance of the ministry, and the purging of their towns from such ministry and public preachers as shall be found vicious in their lives, and perniciously heterodox in their doctrine.

So strictly were these matters attended to, that we have, in 1800, the exact penalties which towns should pay for neglecting to supply good preaching to the people. If the neglect lasted for three months out of six, the penalty was from thirty to sixty dollars;

[1] For some peculiarities of Newbury, see Contr. to Eccl. History of Essex Co., 1865, 340.

[2] Oakes *v.* Hill, 10 Pick. 333. How far English precedents were followed may be seen Veley *v.* Gosling, 1 Eccl. Cases, 457, 1842.

if repeated, the penalty was from sixty to one hundred dollars.[1]

§ 3. The General Court did not consider their laws merely good advice on religious subjects. Not only were the meeting-house and minister and parsonage to be provided for by the people by a tax on each inhabitant according to his personal and real property; but the inhabitants were required to attend the preaching provided for them under a penalty of five shillings for absence on Lord's day, on Fast or Thanksgiving. At common law it was an offence to be absent from public worship; and by statutes 1 Elizabeth ch. 2, absentees without excuse were liable to the censures of the church and a fine of twelve pence. Our statute of 1791 allowing able bodied men, absent three months from meeting, to escape by paying ten shillings, was a serious modification of the statute before in force. The fine of ten shillings might be imposed on any delinquent in Massachusetts until 1835, when the law was repealed.

John White, in his "New England's Lamentation," rebuked severely those "whose stubborn will will not submit to the just and regular discipline of the church to which they belong, or because they cannot have their own will as to the place of their worship."

§ 4. Following still the precedents of the ecclesiastical law of England, all landholders, resident or non-resident, Christian or not Christian, were

[1] Commonwealth *v.* Waterborough, 5 Mass. 257. Indictments of towns before the statute were not uncommon, especially in Essex Co. Appendix B.

taxed, though they never saw the minister, or entered the meeting-house.[1] All corporations holding lands within the parish were also taxed for the support of public worship until 1831. We have the Goodell Manufacturing Company engaged in manufac uring woollen goods, taxed as members of the First Congregational Society in Millbury;[2] and Amesbury Nail-Factory, taxed for the support of the gospel in the East Parish of Amesbury. The court listens to no arguments of counsel, founded on the fact, that the *chief* design of public worship was to save souls; and my Lord Coke had long ago laid it down, that corporations had no souls to be saved; the court rather gave heed to the logic of the East Parish of Amesbury, that, — so far as the community is concerned, — public religious and moral instruction is intended for the prevention of *crimes*, not the *salvation* of souls.[3] This portable doctrine of the courts (the only one that they can administer) probably qualified the preaching in many towns of Massachusetts at that time.[4]

§ 5. Various statutes and decisions of courts were required to adjust the rights and liabilities of members of parishes and religious societies.

Under the statute of 1817, ch. 77, no person, not a member of a parish, could vote on matters relating

[1] After 1811, the non-resident's land-tax went to support the minister of his denomination, if there was one in the town. Turner *v.* Burlington, 16 Mass. 208. The liability of non-residents in Maine was qualified by St. 1821. Dall *v.* Kimball, 6 Maine, 123.

[2] Goodell Mff. Co. *v.* Trask, 11 Pickering, 515.

[3] Amesbury Nail Fac. *v.* Weed, 17 Mass. 54.

[4] Christian Spectator, 5; 207.

exclusively to parishes. But parish taxes for the support of public worship legally assessed on men, according to their property and lands, could be collected by the same legal process of attachment and arrest of the body, as taxes for town or county purposes. We have Nathaniel P. Fisher, of Walpole, arrested in 1832, for refusing to pay his tax of two dollars, thirty-eight cents, levied on the parishioners, at town-meeting, for the support of the gospel, in the first society at Walpole.[1]

If a parish were delinquent in paying its debts, the members of the parish were liable individually; a liability which a creditor could enforce with the whole rigor of the law, as effectually as any personal claim. We have a decision illustrating the point in Essex County. The sheriff of Essex, having an execution against the North Parish in Haverhill, for three hundred and fifty dollars, found no property belonging to the North Parish. The meeting-house was old; the ministerial funds and parsonage land could not be levied on; thereupon the sheriff seized three shares in the Merrimack Bank, belonging to one of the parishioners, sold them, and satisfied the parish debt; and the court held, that members of a parish were liable for the debts of the parish, by a long course of decisions, too ancient to be unsettled.[2]

§ 6. Such being the liability of a parishioner,

[1] Fisher *v.* Whitman, 13 Pick. 350.

[2] Chase *v.* Merrimack Bk. 19 Pick. 567. The Parish was partly in New Hampshire. The same doctrine was applied in Maine. Fernald *v.* Lewis, 6 Maine, 264.

it became a serious question how and when a man became a parishioner; and here the ecclesiastical law had its surprises. Lawyers and laymen, drawing analogies from Fisher *v.* Whitman, imagined that they could not become members of a parish unless they had filed a certificate to that effect with the town clerk or the clerk of the parish. The party whose shares were taken at Haverhill, claimed that he was no parishioner, because he had not filed with the town clerk the certificate pursuant to the laws.[1] But Judge Wilde held the unhappy man to be a member, nevertheless. He had been admitted a member of the parish on the application of a friend, in 1831; he had also allowed his name to be used as one of the trustees of the ministerial fund, and he had attended parish meetings. It is true, that if he had filed with the town clerk a certificate in person, according to the laws of 1811 and 1823, it would have been more certain that he was a member of the parish; but the Court deemed him a member with sufficient certainty, without such certificate. "There are other ways of becoming a member of a parish, and liable for all its debts," said the Court, "beside filing a certificate with the town clerk." [2]

This unfortunate member of the North Parish in Haverhill had not yet illustrated all the points and beauties of Parish Law. The party who recovered

[1] St. 1811, ch. 6; 1823, ch. 106.

[2] In Connecticut also, the certificate indicated the parishioner's preference. The Laws of 1817 allowed Baptists to file one with the town clerk rather than the parish clerk, (8 Spectator, 502,) in imitation of the Massachusetts act of 1811.

the former judgment (in July, 1835), recovered a second against the North Parish in Haverhill, and finding more shares of the same parishioner, levied on them, in the afternoon of the 4th of April, 1836. On the same 4th of April, early in the morning, however (between six and seven o'clock), the parishioner heard that something was astir, and took the precaution to give notice in writing to the clerk of the North Parish in Haverhill, that he no longer considered himself a *member* of that parish; and the Court decided that such a notice was sufficient to save his bank shares; notwithstanding the remonstrances of Mr. Choate.

Such a race of diligence can hardly be run again in Massachusetts as the one that came off on the 4th of April, 1836, between the parishioner and the sheriff; for on the 30th of April, the Revised Statutes went into operation, which established the law that "no one can be made a member of a religious society without his consent in writing."[1] As to the liability, in our day, under any circumstances, for parish debts, the Supreme Judicial Court, in 1850 (without directly deciding the question), intimated very strongly that the general liability for all debts of the parish had been taken away since the Revised Statutes went into operation.[2]

§ 7. To illustrate a little further the obscurity left in the ecclesiastical law in regard to membership, after the acts of 1811 and 1823 had been passed, al-

[1] Rev. Sts. ch. 20, sec. 4. Gen. St. ch. 30, § 6, 7, 8. Appendix C. Sudbury *v.* Stearns, 21 Pick. 148.

[2] Richardson *v.* Butterfield, 6 Cush. 191.

lowing a certificate of membership to be filed with the town clerk or parish clerk, fixing the place where the party was willing to be taxed, we will cite a case. The Rev. Mr. Truair was sued, in 1832, for marrying parties who did not belong to his parish; exposing himself, under a law now repealed, to a penalty of fifty dollars. The Court held that a bridegroom, for certain purposes, or any man, might well be a member of two parishes at the same time, and exempted Mr. Truair from the penalty.[1]

The comprehensively troublesome traits retained by the law are developed in the case of Captain Oakes. Captain Oakes, on the 23d of June, 1828, obtained a certificate from the clerk of the "Congregational religious society for the support of Orthodox preaching in Malden," that he was a member thereof. On the 28th of July following, the captain obtained from the same society a certificate that he ceased to be a member; and presented this last certificate to the First Parish of Malden (the oldest religious society in the town), and asked to be admitted as a member of the parish, and vote in parish meetings. The clerk of the First Parish refused his vote, and was sued by the captain "for the wrong and injury." The Court, following English precedents, held, that all the inhabitants of the Commonwealth belonged to some religious society, and were to be taxed, somewhere, for the support of the gospel; that the oldest society claimed every

[1] Leavitt *v.* Truair, 13 Pick. 111. Sumner *v.* 1st Parish, Dorchester, 4 Pick. 361. Gage *v.* Currier, 4 Pick. 403.

one, and must have every one that did not show, by certificate or otherwise, that he belonged elsewhere. That as to saying they would not receive a man as a parish member, they could not do it. *Ex necessitate rei*, Captain Oakes became a member of the First Parish in Malden, on leaving the Orthodox or any other society in Malden, and was fully entitled to vote at a parish meeting, on presenting a proper certificate, whether the parish wanted his company or not.[1]

Who are parish members? what are parish rates and poor rates? are great topics still in English ecclesiastical law. But, since the case of Capt. Oakes, such changes have been made in our law, that membership, in the outset, cannot be forced upon a religious society; there must be some assent by the society or its agents to the admission of new members.[2] Without further statement or illustration, we may say that the modifications of the ancient and rigorous law of membership are comprehended within these easy limits in our day; to wit, whoever of full age gives his assent in writing, and is accepted by the religious society as a member, becomes liable not for all the debts of the society, but only for his

[1] Oakes *v.* Hill, 10 Pick. 333. To be entirely accurate it should be stated that an informality in the certificate of Captain Oakes, exempted the parish clerk from damages, Oakes *v.* Hill, 14 Pick. 442; but in Keith *v.* Howard, 24 Pick. 292, the clerk was held liable.

[2] Sudbury *v.* Stearns, 21 Pick. 148; Gen. St. ch. 30, § 6.

Further changes as to the admission of members to religious societies are proposed, House Doc. No. 165, for 1860, also 1864; but not adopted. In Maine, since 1821, the assent of the parish has been required. Lord *v.* Chamberlain, 22 Maine, 67.

proportion of such annual tax as may have been properly assessed during the time of his membership.[1]

[1] Ware *v.* Sherburne, 8 Cush. 267. St. 1817, ch. 184. Parker *v.* May, 5 Cush. 350.

CHAPTER III.

Tax Laws for the support of the Gospel modified to accommodate Quakers, Episcopalians, Baptists, Universalists — Bill of Rights, 1780 — Methodists and St. 1799 — Religious Freedom, Act. 1811.

§ 1. It was by degrees that the inhabitants of Massachusetts, who preferred other denominations, obtained leave to pass by certificate, from under the care and supervision of the Congregational churches established by the early laws of the Colony.

In 1646, The Great and General Court, aiming at a certain uniformity in doctrine, while they disclaim the "lordship of human power over the faith and consciences of men,"[1] enact, that certain persons denying a variety of doctrines, among them the baptism of infants, shall be banished, "if they continue obstinate after due means used for their conviction."

However harsh banishment may seem to us, it did not interrupt the intercourse of Roger Williams with his esteemed friends of the Bay. It continued to be a penalty in most of the colonies after the Revolution.

Towards Quakers, the height of rigorous dealing was reached in October, 1658, when the death penalty was threatened for the first time. On the recommendation of the Federal Commissioners of the

[1] Ancient Charters, 120.

United Colonies to the General Courts of all the colonies, Massachusetts had enacted this severe law by a majority of one vote. During the two years that it was in force, occurred the executions of Stevenson, Robinson, and Mary Dyer, on Boston Common.[1]

About one hundred years after these sad events, our ancestors, instructed by the bitter English acts of Uniformity; instructed by their own contests with Antinomians, Baptists, and witches, began to show the fair fruits of their varied discipline in the tolerant laws which permitted the persons commonly called "Anabaptists and Quakers" to be "*permanently* exempt from tax to support the ministry and repair the Meeting House; provided, however, they bring certificates from three members of their meeting, that they are conscientious in their scruples, and do frequently and usually attend their meeting for the worship of God on the Lord's day."[2] As for *Papists*, they had nothing to expect in those early days; the charter of William and Mary in 1691, which confirmed all the preceding royal charters, and united the Plymouth to the Massachusetts Colony, making Nova Scotia, Maine, and Massa-

[1] Mass. Records, 10: 212. Palfrey's N. England, 2: 447—485. It would seem that the harsh moods of our ancestors, in the case of the Quakers and witches, hardly lasted two years. We might look in vain for a swifter return to common sense, after a national excitement. As to Witchcraft, see Examiner, 11: 240: do. 50: 457. Bib. Repository, 1842, 131.

[2] In Massachusetts, as early as 1728, they were exempt for ten years; in Connecticut in 1729. In 1692, Quakers were allowed to affirm, instead of swearing fidelity to the Crown. In 1743, they were allowed to affirm in all judicial matters.

chusetts one province, excepted the papists by name from the liberty of conscience allowed in the worship of God to *all Christians*.[1]

In behalf of Episcopalians, the tax laws were relaxed as early as 1735. Town treasurers were ordered to pay over to the Episcopal minister such taxes as were collected from his parishioners; provided they brought certificates that they were members, and usually and frequently attended the public worship of God with them on the Lord's day.[2]

§ 2. It was a good battle which the dissenters (so the Quakers, Baptists, Methodists, Presbyterians, Episcopalians, and Universalists were called),— it was a good battle that they fought for religious liberty in Massachusetts. The Congregationalists have had the benefit of the concessions, which they insisted upon so steadily for many years.

[1] By act of 1700, Jesuits and Romish priests were required to depart the Colony, under a penalty of imprisonment for life, if they returned. 2 Palfrey, 471, as to banishment.

The merging of New Haven Colony into Connecticut in 1663, and of Plymouth Colony into Massachusetts in 1691, are both proofs of the flexibility and good temper of the weaker States. The Confederate Commissioners of the United Colonies, by their solemn discussions of the public law relating thereto, did what they could to soothe the last days of the New Haven Colony. 2 Hazard's State Papers, 415. The Plymouth Union with Massachusetts was regarded more in the light of matrimony than merger.

[2] Ancient charters, 538. Connecticut appears to have preceded Massachusetts some sixteen years in exempting Episcopalians. The early trials of that denomination in Connecticut are enumerated 4 Church Review, 433, 549—9 do. 73.

Presbyterians, in 1746, applied for a general law of exemption; but they obtained only the local act 1752 for individuals in Newbury. Essex North, 1865, 267.

The most persevering resistance to the tax laws was made by the Baptists, who were taxed until 1728, except in Boston and a few other towns, for the support of Congregational ministers; after repeated applications to the General Court, they obtained the limited relief of the act of 1757.[1]

The Warren Association, through the agency of the Rev. Isaac Backus of Middleboro', was very diligent in seeking this relief. When the congress of delegates met in Philadelphia in 1774, the hardships of the denomination were laid before them. Throughout the Revolution, the Baptists took up the burden of Roger Williams, who had proclaimed, in his day, freedom of conscience, and separation of church and state, to a reluctant generation.[2]

§ 3. But all relief from territorial parish taxes must not be attributed to the efforts of dissenters. In Boston, it had not been allowed to tax the inhabitants generally, as in the country towns, for the support of the ministry. An assessment was laid upon owners of pews, according to a valuation; a

[1] The Statutes prior to 1757, granting relief for the period of five, seven, and ten years, and annually, to dissenters, were apparently imitations of English statutes for a like purpose. 2 May Constl. History.

[2] That Helwys, the Colleague of Robinson in Holland, was a Baptist, and held correct views as to church and state, see 16 Christian Review, 268; 25 do. 130. As to hardships of early Massachusetts laws, 14 do. 94, 197, 344.

[3] The efforts of Mr. Backus and the hardships of the early laws are quite fully described by Professor Hovey, in his "Life and Times of Isaac Backus." Mills Historical Discourse, Salem, 1854. The Baptists and their Principles, Norwich, 1857. New Englander, Aug. 1860, 595, for Connecticut. In Virginia, 25 Chr. Rev. 33.

privilege extended in 1754 to all religious societies of the Commonwealth who chose to adopt it. This law, no doubt, withdrew several churches and ministers from conflict with reluctant parishioners. It was adopted in cities, after being confirmed by the statutes of 1786.[1]

The dissenters of Massachusetts were bent on procuring a further separation of the churches from the state tie. They urged the Convention of 1780, which formed a Constitution for the Commonwealth, to do away all features of the ecclesiastical law that might remind them of the English Acts of Uniformity, leaving religion to support itself by its own inherent, heavenly merits. They were not a little encouraged by the bill of rights; for it attempted to place all denominations on an equality; though it retained in vigor the incompatible policy that annexed religion to the soil, compelling men who lived round the meeting-house to give the Commonwealth some excuse for not attending the public worship provided by law. Soon after 1780, we find the dissenters trying their rights in the courts, and obtaining interpretations of the Bill of Rights.[2]

§ 4. Among the first to assert their rights, were the Universalists; and this was the occasion: Rev.

[1] Gen. St. Ch. 30 § 39, 40. Mussey *v.* Bulfinch St. Ch. 1 Cush. 160. Atty. Gen. *v.* Federal St. 3. Gray 1. St. 1817, ch. 89.

[2] The Virginia Constitutional Convention in 1776, at Mr. Madison's suggestion, had adopted, in lieu of "toleration," the following clause: "all men are equally entitled to the free exercise of religion according to the dictates of Conscience." 25 Ch. Review, 33.

John Murray, the father of Universalism in this country, after preaching with great success in Philadelphia, New York and Newport, was appointed chaplain to the forces from Rhode Island, by Washington; — a service which he performed in a manner entirely satisfactory. After the war, he retired to Gloucester, in Essex Co., and there preached for some time.

Under the statutes passed after the Bill of Rights of 1780, individuals might pay their taxes for the maintenance of *any* "public *Protestant* teacher of piety, religion, and morality," of their own sect, provided there was one in the town, on whose instructions they attended; otherwise the tax was paid to the established Congregational preacher of the parish.

For the recovery of taxes, paid by his parishioners into the town-treasury of Gloucester, Mr. Murray brought a suit, which was repeatedly on trial from 1783 to 1786. It was once argued by Rufus King with great eloquence, and again by Governor Sullivan, who was opposed by Parsons. At length, Mr. Murray gained his cause from the jury, notwithstanding the adverse charge of the bench, and the learned arguments of Parsons, tending to show that one who denied the eternal punishment of the wicked could not be the public teacher of "piety, religion, and morality," required by the Bill of Rights.[1]

[1] Life of Sullivan, by T. C. Amory, vol. 1, 182. "Universalism Nipped in the Bud," by Rev. John Cleveland, 1776. Appeal of Independent Congregational Church at Gloucester, 1785, and Reply at Salem Athenæum.

The decision which was obtained by the Baptists in March, 1782, in Bristol County Court, pronouncing "the certificates unconstitutional" under the Bill of Rights, seems to have been local in its influence.[1]

The law of 1799, ch. 87, allowing the town treasurers to *omit* to tax those who belonged to, and usually attended other churches, or allowed the ministers of "other churches" to recover, by petition or *suit* of the town-treasurers, the sums paid into their hands for the support of the gospel, was a concession in the right direction. The first party we find seeking an interpretation of this act from the court is a Methodist clergyman, (the Methodists made their appearance in the Commonwealth about 1790) who obtained a peculiar construction of the law, hinted at in the suit of Murray against Gloucester, — a construction well adapted to support the Congregationalists, but not bringing much comfort to the Methodists, Baptists, or Universalists. The court decided, in 1804, that an itinerant Methodist minister, unless "ordained and *settled*" over a society, could not recover under the law of 1799. They held that, as the plaintiff preached along the country from Pittsfield to Springfield, if he were allowed to recover of the town treasurer the moneys paid by Methodist hearers, "it would have the most direct tendency to subvert all the regular religious societies in the Commonwealth." The judges grounded themselves on the plain *policy*,

[1] Life and Times of Isaac Backus, 245.

of the Commonwealth, expressed in the Bill of Rights of 1780, which made it the duty of the Legislature "to authorize and require the towns parishes, precincts, and religious societies, to make suitable provision for the support and maintenance of public Protestant teachers of piety, religion, and morality, in all cases where such provision shall not be made "voluntarily." [1]

§ 5. Between this decision in 1804, and the amendment of the Bill of Rights in 1834, statutes were passed, qualifying decisions which courts felt themselves obliged to make in their application of this incompatible policy to exigencies thrust upon them by the rapid progress of the age. The current of judicial decisions and of remedial statutes flowed along thus: A few years after the Springfield case, the dissenters were alarmed by a decision of the Supreme Court, denying that ministers of unincorporated societies could claim anything of the town treasurer who had received the taxes of their parishioners; for they were not the "public" teachers prescribed by the Bill of Rights, but mere "private teachers of piety, religion, and morality."

This decision, first given in the case of a Universalist minister in Falmouth, Maine, in 1810, by

[1] Washburn *v.* Springfield, 1 Mass. 32. Appendix B.

Under St. 1799, ch. 87, it was held: 1st, The dissenting member of a parish must give notice where he wished his tax paid. Montague *v.* Dedham, 4 Mass. 269. 2d, The dissenting minister could not recover taxes unless he applied for them in one year, nor could he if he preached to two adjoining parishes. Kendell *v.* Kingston, 5 Mass. 524, 1809.

Chief Justice Parsons, was repeated in Brookfield and Byfield, in the case of the Baptists.[1]

Few churches of any denomination, along the sea-board, had been incorporated; it had been "six times solemnly decided" by the Courts of Massachusetts, says Mr. Dane, in 1803, that acts of incorporation were not needed. We may imagine, therefore, the haste with which dissenters applied to the Legislature in 1811, for an enabling statute; and to make all things doubly sure, they set themselves vigorously to work obtaining acts of incorporation. In five years, there were passed some seventy special acts; only one of them for a Congregational society.

The Statute 1811, ch. 6, was at length passed to cure an obvious grievance, to give to voluntary religious societies some at least of the attributes of corporations, that they might thereby have a standing in Court.[2] Paying to town treasurers taxes which belonged to dissenting ministers was held a minor grievance not to be relieved by statute, though it required in one instance fourteen suits at law before a town treasurer yielded the taxes, and in another an expense of one hundred dollars and four years' time to get four dollars out of his hands for the use of a Baptist minister.

Whatever the omissions of the act of 1811, it was justly called the "religious freedom act." Un-

[1] Barnes *v.* Falmouth, 6 Mass. 401; Lovell *v.* Byfield, 7 Mass. 230; Turner *v.* Brookfield, 7 Mass. 60.

[2] Fisher *v.* Whitman, 13 Pick. 356; Turner *v.* Burlington, 16 Mass. 208; Biblical Repository, 1835, 207, 353.

der it, any one might leave an old established Congregational society for an Episcopal, Methodist, Baptist, or Universalist society in the same town, whether he had scruples or not. His tax often passed through the hands of a reluctant town treasurer; but it reached, sooner or later, his own minister, however ordained, settled, or itinerant; whether his religious society was incorporated or not. Still he was obliged to bring to the town treasurer or clerk a certificate that he really did belong to the new society; recognizing thereby the allegiance that he owed to the Commonwealth and the Congregational church in matters of religion.

The form of the certificate is simplified thus.

1. By St. 1799, ch. 87, it was to be signed by the minister and a committee of two.

2. By St. 1811, ch. 6, the committee alone signed it.

3. By St. 1823, ch. 106, the clerk of the society alone signs it. After 1811, the certificate might be filed by the parishioner, or any person in his behalf, with the town clerk. Fisher *v.* Whitman, 13 Pick. 350.

4. To the Shakers and Quakers we are indebted for the only specimen that we have in the legislation of our day of the ancient certificate of belief and worship. By the General statute of 1860, ch. 13, § 10, if a Quaker or Shaker wishes to be exempt from enrolment among the militia, he must, on or before the first Tuesday in May, annually present to the assessors of the town a certificate, signed by

two or more of the elders or overseers, and countersigned by the clerk of the religious society with which he meets for public worship, stating that he "frequently and usually attends religious worship with said society, and we believe he is conscientiously scrupulous of bearing arms." This memento comes down to us from St. 1809, ch. 108, without amendment.[1]

§ 6. After 1811, the Commonwealth paid little attention to the quality of the preaching to which her inhabitants listened. If the parish taxes were paid, and her inhabitants supported somewhere, what they chose to call the gospel, the Commonwealth was content. Even Shakers have been regarded as a religious society, whose ordinances, doctrines, and *preaching* might be paid for and propagated under the statute of 1811.[2]

Public opinion was by no means unanimous in favor of this statute, if we may judge by the votes of the Legislature. The Courts too were not long in disclosing, that in their opinion the statute made a serious inroad upon the long settled policy of the Commonwealth. The Chief Justice gave a reluctant assent to its constitutionality in 1817, saying, with considerable despondency, that it might become injurious to "public morals and religion, and tend to destroy the decency and regularity of public worship." In those days, the Chief Justice, somewhat at the head of the church as well as the law, makes

[1] As to Quakers, see House Doc. 1863, 137.

[2] Lawrence *v.* Fletcher, 8 Met. 153; Earle *v.* Wood, 8 Cush. 430.

no attempt to conceal his discomfort, while pronouncing the statute of 1811 constitutional in favor of an "unincorporated Baptist Society, which had no settled minister, but engaged one to preach to them once a month, from a neighboring town." [1]

Thus far our narrative indicates a conflict going on, with intervals of repose, in regard to the State policy, tending towards uniformity, which required public worship to be supported by taxation. The severity of the conflict was aggravated rather than allayed by judicial decisions, however carefully made. But special legislation has adjusted so many parts of the new growth and the old policy, that we are ready to anticipate a happy issue to the entire conflict.[2]

[1] Adams *v.* Howe, 14 Mass. 344. For solicitude on the repeal of parish laws of Connecticut, see Memoir of Dr. Lyman Beecher.

In February, the bill was rejected by the House, 81 to 126. On the 11th of June following, it passed in the House by 204 to 161 : in the Senate 19 to 16 ; by yeas and nays. In the meantime the bill had been amended, and Governor Gerry had sent a special message.

By a singular coincidence, we find Lord Sydmouth, in May 1811, attempting to check the growth of English dissenters, and his efforts resulting in 53 Geo. III., Ch. 155, which swept away the Five Mile and Conventicle Act.

[2] It hardly needs to be said that the stringent parish laws of Massachusetts were promoting dissent and weakening Congregationalists. Instances are given in Essex County of Congregationalists forming Presbyterian, Baptist, and Methodist societies, merely to avoid the tax laws. See Essex North, 238 ; Examiner, 13 : 349.

The position of the church and state questions in England in 1863 is stated 2 May, 429.

The union of church and state in Virginia, which continued till the Bill of Rights in 1799, is described in the Princeton Repository, 1848, 186, and 23 Christian Review. As early as 1776, modifications were made in favor of dissenters from Episcopacy.

CHAPTER IV.

The choice of a Minister under the tax laws — The Dedham case — Settling a Minister by the town — The majority of the Church seceding, the name and property are retained by the adhering minority.

§ 1. In the year 1820, a very able convention was assembled in Boston to revise the Constitution of Massachusetts. It was a cherished object of the dissenters, aided by many excellent men of the Congregational denomination, to modify the Bill of Rights, so as at least to include the enabling act of 1811; leaving little supervision of religion to towns, and less still to town treasurers. After great debate, an amendment was prepared to that effect; but the people promptly rejected the amendment by more than 8,000 majority. In the same spirit they refused by more than 12,000 majority, to allow ministers of all denominations to be overseers of Harvard College.

There was yet a strong attachment to the ecclesiastical superintendence of the Commonwealth. To the *tax* system, no general complaint was made among the Congregationalists, who had 383 churches, two thirds of the churches of the State. They believed that a good deal of religion as well as essential dignity would be taken away by any amendment of the Bill of Rights of 1780.

John Adams, in reply to the Baptists, before the Revolution, had said, "they might as well turn the

heavenly bodies out of their annual and diurnal courses, as the people of Massachusetts at the present day from their meeting house and Sunday laws;" and the Massachusetts people were still of the same mind.[1] In the convention of 1820, Mr. Hoar, Mr. Saltonstall, and Judge Wilde pressed these conservative views; while Mr. Webster, Chief Justice Parker, and Judge Story favored all reasonable amendments. Judge Hubbard, representing the Orthodox view, did not object to the Bill of Rights of 1780 as it stood; especially he wished the Commonwealth to retain the power of compelling citizens to go to meeting; for, said he, though we may not need the power in 1820, thirty years hence a generation may rise up that will need to be compelled by the Commonwealth.[2]

§ 2. Under the Bill of Rights of 1780, Congregationalists had slumbered, as under their own peculiar vine; bearing unto them taxes and other good and religious fruits; they deemed it was intended for the especial refreshment of Christians of the established order. Little did they dream, in those halcyon days of Commonwealth favor, that a freezing blast was soon to sweep over them, blowing out of the judicial quarter of the heavens, heretofore so bland and genial to the churches proper of the Commonwealth. Before the year 1820 was ended, it came the turn of the Orthodox Congregationalists to be surprised at the mysteries of the law eccle-

[1] Life and Times of Backus, 350.
[2] Debates, 352.

siastical, where they least expected it, in the matter of settling a minister.

If there was anything settled in the ecclesiastical polity of Massachusetts, it was the mode of settling the minister. Early in the colonial history, the church, without asking the concurrence of the parish, elected the minister. This was the usage until 1641, when a law was passed, that "every church hath free liberty of election and ordination of all her officers." The Cambridge Platform of 1648 sanctioned the election by the church alone; in 1668, the same law was re-enacted. In 1692, for the first time, towns appear, by law, to have anything to do with the election of a minister; thus the law remained until 1780, when the Constitution was formed, and the Bill of Rights ran as follows: "Provided, notwithstanding, that the several towns, parishes, precincts, and other bodies politic, or religious societies, shall at all times have the exclusive right of electing their public teachers, and of contracting with them for their support and maintenance."

The practice had been, for the church to vote for the minister, and the parish afterwards to sanction their vote; and the minister thus elected was, in ecclesiastical language, "the pastor of the church and the minister of the people." Courtesy and long usage had so settled the matter this way, that no other was thought of.[1]

[1] The distinct action of the church and society is still recognized among the Baptists and other Congregationalists. But the assent of the society to the election of a minister by the church, may be proved

§ 3. Under the tax laws, however, as dissenters increased, and rights were freely canvassed, civil and ecclesiastical, it was not easy to deny to the parishioners, in general (called as they were by law to support the minister), the right to take an active share in the election of the minister. This right might be inferred to belong to them, communicants or not, if the Bill of Rights had been silent upon the subject. If it did not belong to them, because they were not communicants, they were prompt to say that taxation and representation did not go together; and for what had they been fighting and talking this long time, if not to make them always go together?

A rugged, revolutionary style of reasoning, not discouraged by dissenters of Orthodox views, out of the Congregational churches, much less by those who were dissatisfied inside of the church, whatever the cause might be, personal or doctrinal.[1]

§ 4. At length, in 1820, the ancient usage of electing the minister by concurrent vote of the church and parish was invaded by the town of Dedham, which threw off allegiance to the church, chose a minister against the remonstrance of two thirds of the church members, and appealed to the Supreme Judicial Court to sanction their choice.

by the acts of the society without any concurrent vote of the society. Leicester *v.* Fitchburg, 7 Allen, 90, 1860. In the Methodist church, the right of laymen to share in the election of ministers, and to be represented in the General Conference, is still in question. Meth. Quarterly, 1860, 228; 1863, 475.

[1] 9 Examiner, 1.

If the Dedham case had been the triumph of an Orthodox parish over an Orthodox church, in choosing a minister, it would have been noticeable. Nearly one hundred years had passed since a town had claimed any rights distinct from the church.[1] But Mr. Lamson, elected by the town of Dedham against the vote of the church, was *Unitarian* in his views. The result of the council, who settled him against the remonstrance of the church, was signed by the leading Unitarian clergymen, — Dr. Channing, Dr. Lowell, and Dr. Kirkland. The case involved the triumph of a suspected theology, that had been avowed openly hardly five years before.[2] The withdrawing of the church of Dedham was in keeping with the ancient Protestant manner of maintaining the faith by separation from the erring body. In its course, therefore, the Dedham case summoned up both the Puritan and religious elements, wherever they were to be found in the Commonwealth.[3]

The pleadings had been settled before Judge Jackson in 1818. In November, 1819, the facts were settled by a jury before Judge Wilde. In both instances, the decision was against the seceding church. The entire case was then re-argued by Mr. Webster and Mr. Metcalf, before the whole court,

[1] The solitary instance was the town of Middleboro', in 1745. In the Fitchburg case, 1801, a majority of the parish adhered to a minority of the church, and together they left the parish church.

[2] The earlier and later progress of Unitarianism is traced in Sprague's Annals, vol. 8.

[3] 60 Examiner, 64, 81.

a few months after the convention for revising the *constitution* had risen.[1]

Chief Justice Parker, who had presided in the convention with great dignity and impartiality, giving the final decision in the Dedham case, insisted that he merely applied principles that had before been laid down, — old principles that had been slumbering in the ecclesiastical law and policy of Massachusetts since 1780, and long before. Chief Justice Parsons had hinted at them in the case of Avery and Tyringham, as early as 1807, where he says, commenting on the Bill of Rights, "Towns, for any cause, may abandon the ancient usages of the country, in settling a minister; and may settle him with or without the consent of the church."[2] Whatever, said Chief Justice Parker, the usage in settling ministers, the Bill of Rights of 1780 secures to towns, not to churches, the right to elect the minister, in the last resort. The language of the bill is, "The several towns, parishes, precincts, and other bodies politic, and religious societies, shall at all times have the exclusive right of electing their public teachers;" and, whenever a town determines to assert its constitutional authority, there is no power in the Commonwealth to oppose its claim, whatever the usage may have been.

§ 5. The seceding Orthodox church of Dedham, comprising two thirds of the church members, established themselves on the opposite side of the

[1] Baker *v.* Fales, 16 Mass. 488.

[2] Avery *v.* Tyringham, 3 Mass. 181.

street from Mr. Lamson's society, and claimed to be the true church of Dedham, and hold the church property. There was no avoiding the question, which of the two is the true church of Dedham; and this, said Chief Justice Parker, had also been settled by Chief Justice Parsons in 1811, in the case of Burr and Sandwich,[1] where a minister was dismissed, against the remonstrance of three fourths of the church members, and afterwards with those members formed a new church, yet that new church, with the minister, was not held by the Court to be the First Church of Sandwich; and how can these seceders in Dedham, without a minister, be held as the First Church in Dedham? Chief Justice Parker then proceeded to draw the inference, that the seceders had no right at all to the name, property, records, or furniture of the First Church of Dedham.

But this was far from the bottom of the humiliation. It was laid down, that a church separating from the parish, for any cause, lost its existence; that never in Massachusetts had a church a legal existence, apart from a parish. The law knew of parishes as corporations, and deacons as corporations, and ministers as corporations; but the church proper was no corporation or *quasi* corporation, and could not, therefore, hold property apart from the parish, whatever its faith.

At this distance of time, we can hardly understand the powerful religious as well as legal effects of this decision, and the discussions it gave rise to

[1] Burr *v.* Sandwich, 9 Mass. 277. What act amounts to secession is a question for the jury. 1st Baptist Ch. *v.* Rouse, 21 Conn. 161, 1851.

The burning of a minister on Boston Common might have attracted the eyes of Christendom more; more tears would have been shed; but for searching the faith of the Massachusetts man, for making martyrs in all towns, precincts, and parishes, nothing could be devised superior to this far-reaching decision.

It was for high truths that the Orthodox churches of Eastern Massachusetts were ejected; but owing to their previous connection with the State, and the piece-meal character of their exodus, they failed to obtain the credit usually awarded to acts of self-denial on a large scale. From Baptists and Methodists, who had not suffered from Unitarianism, they obtained the assurance that everything was happening that could be desired for the separation of church and state. Their more distant Presbyterian brethren advised them to mend their platform of church government, and make it correspond with Scotch models; while their Unitarian neighbors assumed towards them very much the same attitude that the English Conformists of 1662 had assumed towards their nonconforming brethren.[1]

In Eastern Massachusetts, half the towns saw their most devout church members, deprived, by a printed report of thirty pages, of meeting-house, parish property, church records, communion furni-

[1] In the matter of securing public approbation, the Free Church of Scotland, in 1843, was much more fortunate than the Orthodox churches of Massachusetts in 1820. See Examiner, 54, 264; Princeton Repertory, 1844.

ture, all the material part of the church, and compelled to begin their ecclesiastical life anew.[1]

Plain men could not help believing that the Bill of Rights of 1780, by connecting towns and churches, did not mean to subvert the ancient Orthodox faith. They claimed that the Commonwealth in her courts, if she upheld any faith, should uphold the ancient Orthodox faith of the fathers. They could not understand why the Bill of Rights should be converted into a lever to pry Orthodox ministers and churches out of their places. It was not left to plain men alone to bemoan the Dedham decision. On the one hand, legal critics, opposed to the Dedham decision, maintained, with great force, that the distinction between church and parish had been obvious in Massachusetts from the beginning; the very papers in the Dedham case containing deeds from the church to the parish, from the parish to the church. Let it be that the town may elect the minister in spite of the church, it will not follow that the church is no corporation. The Commonwealth makes school districts corporations by treating them as such; they must be corporations in order to live; and surely the life and

[1] Taking the ejected nonconformists of 1662 at two ninths, the Massachusetts ejectments in proportion were quite as large. In Connecticut, but one church, Brooklyn, was obliged by Unitarianism to give up its meeting-house.

See "The Historical Sketch of Congregational Churches in Massachusetts," by Rev. Joseph S. Clark, D. D., for local and minute information. Also "The Exiled Churches of Massachusetts," in the Congregational Quarterly, July, 1863.

dignity of the school district has not been more dear to the Commonwealth than the life and dignity of the church. The church is not to be implied out of legal existence by statutes[1] passed to aid her in holding property, when such statutes can be more sensibly interpreted by implying her in legal and independent existence; least of all is it to be charged on the Convention of 1780, that they intended to put her out of existence by the Bill of Rights, when there is not a surviving member of that convention who believes it.

Those who are curious may see the legal ingredients of the Dedham decision as early as 1812, in the case of Boutelle *v.* Cowdin, 9 Mass. 254, where it was successfully argued by Bigelow and Lincoln, on motion for a new trial, that the plaintiff, a deacon of a church in Fitchburg, could not maintain suit on a note given in February, 1805, to the church; because neither church nor deacon had any standing in court until June, 1805, when the religious society, to which the church belonged, was incorporated.[2]

On the other hand, there were legal critics, who defended the Dedham decision with abundant acuteness; insisting that the Bill of Rights was enacted in 1780, when all parties were Orthodox, and it was not to be presumed that Samuel Adams, a

[1] 1785, ch. 51, § 1; Gen. St. ch. 31, § 1.

[2] The theological and ecclesiastical points of the Dedham case are many of them to be found in the Fitchburg Council pamphlets, 1801; Dr. Samuel Worcester's Life, 1, 263, 356; Dr. Bancroft's Princeton Council Defence, 1817; also in the "Strictures" of J. S. on Rev. Mr. Thacher, 1785

deacon of the Old South Church in Boston, Governor Strong of Northampton, and Mr. Phillips of Andover, lacked vigilance, and allowed words to creep into the bill unadvisedly. They knew well the difference between church and parish, if there was any. The church was not accidentally omitted when they gave the choice of the minister, in the last resort, to "towns, parishes, precincts, and other bodies politic, or religious societies." The church was formally excluded and expressly, in conformity with the growing democratic sentiment of that time, with a view of giving all those the right of electing the minister who were taxed for his support.

It was something more than the privilege of assisting to elect, that the towns took under the Bill of Rights; it was the exclusive right of electing; and so of parishes, and so of precincts; and so of other bodies politic not included under the name of towns, parishes, and precincts: to wit, religious societies; which religious societies were certainly not churches, nor are they churches to this day in legal language. As to churches being corporations, there never was a church, not connected with a parish, sued in the courts of the Commonwealth; there never was a deed from such church recorded; no common seal of such church was ever seen. No church makes contracts with the minister, no minister ever thinks of suing a church for his salary. And suing, sealing, and contracting are the badges of corporations in courts of justice.

We cannot repeat all that was said on both sides. Without farther analysis, we may fairly say:

thus the battle raged for ten years round Dedham as around Troy of old; and thus did the war sweep out, and cover the Commonwealth through the periodicals and ecclesiastical councils of the day.[1]

The views of the Court are supported in some of the early ecclesiastical council pamphlets. Thus, in 1745 at Middleboro', and in 1806 at Hingham, it is assumed, without discussion, that the party adhering to the parish take the property and the name. In the Salem council, 1775, the name is expressly given to the *adherents*. After the Hadley church had separated from the Weathersfield, the General Court of Connecticut held the Weathersfield church to be the true church.[2] This principle underlies the decision of the Free Church case of Scotland and the Old School Presbyterian case. In Connecticut, the court holds that parish property is *indivisible* as well as inseparable. On petition of inhabitants of Portland, the Legislature passed a bill that the parish funds be divided, but the court denied its validity. They would listen to no analogies, drawn from the division of towns or school districts.[3]

And now, after forty years' discussion, the questions decided in Baker *v.* Fales are seen to be full of difficulty. It is still insisted that the learned judges erred in refusing a church power to hold property, because it was an association unincorporated, or be-

[1] Spirit of the Pilgrims, vol. 1, 2. Christian Disciple, vol. 2. Christian Examiner, 1827, 1828.

[2] Trumbull, 1, 324. So in New Haven, Bacon's Hist. Dis.

[3] First Parish in Portland *v.* Second Parish, 22 Conn. Rep. S. P. Den *v.* Bolton, 7 Halstead, 206, N. Jersey, 1831. Cammeyer *v.* United Germ. Luth. Chhs., 2 Sandford, Ch. 216, N. Y. 1844. Robertson *v.* Bullions, 1 Kernan, 255, N. Y. 1858.

cause it was separated from the religious society. On the other hand, whatever errors are pointed out, the defenders of the decision insist, that the learned judges examined the case in the spirit of the old statutes uniting church and state; following out the policy of the Commonwealth indicated in the Bill of Rights of 1780; following out also the decisions of the Supreme Judicial Court since the year 1800.

It is a relief to turn from this balancing of systems and doctrines, denominational and state policies, personal and historical questions, which cluster about the Dedham case, and make it a point of departure from the old into the new era of Massachusetts ecclesiastical law.

CHAPTER V.

The Principles of the Dedham Case applied — Brookfield — Hollis Street — Amended Bill of Rights, 1834.

§ 1. It may not be amiss to trace the rules laid down in the Dedham case still farther, to see if they have been modified since 1820.

Chief Justice Parker, who gave the opinion of the full court, in Baker *v.* Fales, departed this life in 1830, highly honored as an upright judge; but with him the courage and tenacity of the lawyers did not die. His successor, Chief Justice Shaw, in 1830, gave again the unanimous decision of the Court in a case of greater hardship.[1]

The Orthodox minister of Brookfield had seceded with a majority of the church; indeed, there were left but two male members remaining in the old parish meeting house; yet the Court decided the old church was entitled to the property, records, and communion furniture. Mr. Strong of Northampton, by leave of the Court, argued this case with fulness, as if the question were a new one; insisting that churches and parishes were distinct; parishes and towns were distinct; the law did not and could not blend them; that churches, dependent

[1] Stebbins *v.* Jennings, 10 Pick. 172.

on parishes or not, might well hold property of their own, distinct from the parish, distinct from the town; that no separation of church and parish could annihilate the church, which had borne such separation repeatedly. He cited, as instances, the old South, formed in Charlestown and moved to Boston; the church in Cambridge, moved to Hartford, under Hooker; and others that had moved from England to the Colonies.[1] But no impression was made on the Court. The church, whatever it might be called in popular language, was in law no corporation, or association, that could maintain its life apart from the parish, so as to hold this property, apart from the parish, by itself or its deacons. This property, say the Court, belonging to the church of the parish, if all the members of the church seceded, would yet remain for the benefit of a church that might afterwards be gathered in connection with the parish. Again, in 1831, it was decided that a seceding Orthodox church could not retain the records of the church kept by their deceased pastor; for such records were the property of the church which was connected with the parish, and then worshipped in the parish meeting-house.[2] From 1831, the rule was applied without debate: whoever wishes to find its applications may examine the histories of towns and ecclesiastical councils for the period; there are few traces in the decisions of the Supreme Court.

§ 2. It was not until 1850, that a modification was

[1] See his argument, Spirit of the Pilgrims, Vol. 5.

[2] Sawyer *v.* Baldwin, 11 Pick. 492.

made of the Dedham decision, or certain expressions contained in the Dedham case, which tended to merge the church in the parish. Then it was perceived and stated, that there was a distinction that the law recognized between the church and the parish, — between the funds of the church and the funds of the parish, so long as church and parish were united. For this distinction, we are indebted to the case of the Hollis Street Church, of which Mr. Pierpont was pastor.[1]

The pew-holders, through the attorney general, invoked the aid of the Court to inquire into the application of funds that had been left to the Hollis Street Church at various times. The Court ruled that the church, though no corporation or *quasi* corporation, has such funds under its own control; they are not under the control of the deacons even; that neither church nor deacons are obliged to render an account to the parish of such funds, though they apply through the attorney general.[2] But this account refused to the parish was ordered to be given in 1852, when a committee of the church applied for it.[3] It is satisfactory to find the Court recognizing the church as a body capable of holding and managing its own property so long as it retains its connection with the parish.

What might now be the fate of a church separated

[1] Parker *v.* May, 5 Cush. 336. The usage of the Old South as to the business and records of the church and society may be found in Wisner's Old South, 54.

[2] Parker *v.* May, 5 Cush. 330.

[3] Weld *v.* May, 9 Cush. 181.

from a parish, it is needless to speculate. Suffice it to say, the intimations of the Court are no more favorable to its separate existence than they were in 1820. At the same time it is to be noticed, that the application of the Dedham case has been confined in several instances to parishes strictly territorial;[1] and it is admitted by the Court, that the amended Bill of Rights of 1834 wrought certain changes in the ecclesiastical law of Massachusetts, indirectly as well as directly.[2]

In our haste to complete the examination of this topic, we find ourselves in the midst of the year 1850, somewhat in advance of the subject of church and state; let us now return.

The elastic Orthodox Congregational churches soon adjusted themselves to the new order of things. With the decisions following in the line of the Dedham case ended all hope of any support of religion from the State, directly or indirectly. It may be that a few fondly anticipated from the Commonwealth a restoration such as Massachusetts Colony enjoyed from royal bounty, when her civil charter was taken away, and the modest colony of Massachusetts Bay re-appeared under the new charter of William and Mary, with enlarged bounds, including Plymouth, Maine, and Nova Scotia. But the more intelligent were disposed to renounce their former connection

[1] Tibball's *v.* Bidwell, 1. Gray, 399.

[2] Richardson *v.* Butterfield, 6. Cush. 191. That a territorial parish retains its characteristics somewhat tenaciously, see Wood *v.* Cushing, 6 Met. 455. See "Rights of the Congregational Churches," Congl. Quarterly, Oct. 1863.

with the State,[1] and everything bearing the semblance of an act of uniformity. Very far were they from blessing the laws that had heretofore tied churches and towns together, and worked out mischievous surprises whenever set in motion. They were rather inclined to exclaim with Lieutenant Mathew Fuller: "all such laws are wicked and devilish laws, and the Devil sat at the stern when they were enacted." Uttering this rough sentiment had cost the lieutenant forty shillings in 1658, at Plymouth Court. In 1830, any man might have uttered it anywhere in Massachusetts without fine or contradiction. So unanimous had the dissatisfaction become, that, in 1834, an amendment of the third article of the Bill of Rights was adopted, by which the ancient policy of the Commonwealth, derived from the mother country, steadily maintained for two hundred years, was entirely abandoned.[2]

The Bill of Rights, as it now stands, recognizes "the public worship of God, and instruction in piety and morality, as promoting the happiness and prosperity of a people, and the security of republican government;" but makes it no duty of the Commonwealth to enforce such worship or instruction. Religious societies have the power, by this amendment, "to elect their pastors, contract with them for their support, to raise money to erect and

[1] See Spirit of the Pilgrims, Vol. 4th. 15 Examiner, 337, 351. Biblical Repository, 1835, 207–353.

[2] This amendment was adopted by the very decisive vote of 32,234 to 3,273. Senate Doc. No. 3, 1834.

repair meeting-houses, maintain religious instruction, and pay necessary expenses." The Commonwealth thus discharges itself of its functions of nursing and fostering the churches.

The Bill says nothing of towns being compelled to support preaching, or of individuals being compelled to attend preaching. The high prerogative of electing the minister in the last resort is conferred by the amended Bill upon the religious society, and upon the religious society alone.[1] While we congratulate ourselves that the old policy of tying the church to the town, with all its compromises, is at an end, we still hold the doctrine that the church shall elect its minister, though not formally embodied in the Bill of Rights, to be a good doctrine. And around it Christian men may be called to contend, hereafter as in times past, with towns, precincts, and parishes, if they would not sink in faith and practice.[2]

[1] In the Presbyterian church, the usage as to electing the minister is not uniform. In some cases, all vote who contribute to his support; in others, only adult males; in others, communicants only; in others, all baptized persons. Repertory, 1863, 480. For the Baptist usage, see Inhabitants of Leicester *v.* Fitchburg, 7 Allen, 92.

[2] In Massachusetts, there has been a good understanding between the General Court and the churches of the various denominations. A certain unfriendly carriage toward the established order is noticed in the General Court of Connecticut, about the year 1743, forbidding ministers to preach abroad without invitation. This grew out of the great awakening. 6 Monthly Spectator, 198; 8 Quarterly Spectator, 497; New Englander, 1853, 195. In Virginia, religious societies cannot tax themselves. Repertory, 1848, 186. That it is the duty of the church, rather than the religious society, to support the gospel, see 2 Cong. Quarterly, 329. Also 15 Christian Review, 420. See, as to essential spirituality of the church, 12 Bib. Sac. 724.

CHAPTER VI.

Churches — Their Members — Excommunication — Discipline — Rights and Usages of Churches — Cambridge Platform — Synod — Creeds — Council Pamphlets as to Usages and Creeds.

§ 1. MANY regard Massachusetts as a laboratory of colonial times, where experiments were first tried in order that they might be applied more advantageously afterwards to a larger sphere, possibly to the whole world. To such reflecting persons, Massachusetts and Old Colony Records wrap up substantial novelties in ecclesiastical and civil government that will maintain their ground for ages to come. We half assent to this theory, provided the making of experiments is extended so as to embrace the Massachusetts of our own century. We confirm ourselves in this pleasing belief, by seeing something new under the sun, here in Massachusetts in 1820: to wit, a large and influential body of Christians essentially benefited by lawsuits. Without claiming for the Orthodox Congregational churches too great advantages flowing from the Dedham case and its sèvere discipline; without insisting that the Free Church of Scotland, turned out of kirk and manse by the Auchterarder decisions, followed exactly in the wake of the Dedham case, — we see, or think we see, a confirmation of our theory, a tendency toward a more congrega-

tional condition of the religious world, arising from the Old and New School lawsuits of the Presbyterian church. We are hopeful Congregationalists; we compass the earth congregationally. But a truce to speculations engendering ecclesiastical pride, while we turn our attention to the churches of Massachusetts.[1]

§ 2. Living theologians have defined a Congregational church, as a society, distinct and complete in itself, of visible Christians, who have covenanted with each other to meet together for the worship of God, for celebrating the Lord's supper, and for other religious observances.

A Congregational church is described, by Chief Justice Shaw, as an "aggregate body or association, — not a corporation or *quasi* corporation, — formed within the religious society or parish; set apart from the rest of the society for peculiar religious

[1] We have the high authority of the Princeton Repertory (1862, 598), for saying that "no church has anything to boast of." The Presbyterian case, Commonwealth *v.* Green, occurred in 1837. By it, five hundred and nine ministers and sixty thousand communicants lost their connection with the Old School General Assembly. Repertory, 1840, 92. The Scotch cases, extending from 1836 to 1843, by which one third of the established clergy of Scotland were deprived of their livings, are cited and explained in May's Constitutional History of England, vol. 2, ch. 14; Repertory, 1844, 86. The points of the Methodist church cases, North and South, which occurred in 1851, are stated 16 Howard, 301; Meth. Quar. 1851, 396, 665; also in 1 Choate's Memoir, 170. Our Baptist brethren, in 1845, like the Methodists, had their churches divided by slavery; but as they were Congregationalists, pure and simple, they have had no international lawsuits. See 10 Christian Review, 479 and 11, 114.

observances, for the celebration of the Lord's supper, and for mutual edification." [1]

A Congregational church, however defined, is allowed, by a statute as old as 1786, "to hold property by grant or donation, to or for its own use, the income of which, exclusive of the income of parsonage lands, does not exceed two thousand dollars." [2] How definitely and emphatically the property belonging to the church belongs to it, and does not belong to the deacons, — who are mere trustees "to take and hold property for the church," — nor to the parish in any sense, may be seen in the case of Weld *v.* May, just cited.[3]

§ 3. The Church and its members are very prominent in the colonial laws; but in our day, half a page gives them all the protection they require of the Legislature. Until 1662, it was the law in Massachusetts, as in England, that only church-members in regular standing could hold office or vote for civil officers.

[1] Weld *v.* May, 9 Cush. 181. For the Presbyterian idea of the church, see Repertory, 1846, 137; 1853, 253. For the Orthodox, see Cong. Quar. July, 1861; Bib. Sac. April, 1865. For the Baptist, 22 Chr. Review, 593; 20, 422. For the Episcopal, distinguishing regeneration from the mystical faculty, 14 Church Review, 635. For the Methodist, see Meth. Quar. 1845, 153. For the Universalist, in which baptism and the Lord's supper are optional, see General Convention, 1863. The Dedham case intimates that there is no distinction between the church and congregation. So Dr. Lamson, in 17 Examiner, 177.

[2] Gen. Stat. ch. 31, § 7.

[3] In Parker *v.* May, 5 Cush. 350, the court recognize "it to be one of the notorious, old, and established usages of all Congregational churches, that the management of their secular affairs is in a majority of the adult male members present at a meeting called in the usual way."

In the interval from 1654 to 1662, the best minds were employed, and the depths of theology sounded, in the adjustment of this, the greatest question of church and state. Synods of Connecticut and Massachusetts, the members of the venerable Confederation for the United Colonies of New England, all expended their wisdom in attempting to enlarge the suffrage without damage to the church, long before there had been any thought of abolishing tests in the mother country.[1]

During the first thirty years of colonial history, there must have been compensations that we cannot understand, which induced the honest non-communicant of Massachusetts Bay to shoulder his musket, fight the Indians, pay taxes, and do hard work for the Commonwealth, without the hope of becoming a member of the Great and General Court or a Justice of the Peace.[2]

It was as guardians of the church, that persons unsatisfactory in doctrine were ordered by the General Court to quit the colony of the bay, sometimes with a recommendation to go to Rhode Island. Repeated orders are given to towns to disarm the followers of Mrs. Hutchinson, a potent woman in state as well as church, during the antinomian controversy.

However important the offender, he could not escape the Court's jurisdiction. Mr. William Pyncheon,

[1] Avery *v.* Tyringham, 3 Mass. 180. 2 Hazard State Papers, 366. 2 Palfrey, 491.

[2] At Plymouth Colony, voters and office-bearers were not required to be church-members.

of Springfield, an honored founder of the town, for publishing in London a work supposed to contain the new school theology in a rudimentary state, had the mortification to see his book burned in 1650, on a lecture day, by the common hangman; and he was himself obliged to attend the Great and General Court in Boston for more than a year, and report progress from time to time, how his conversion to the established views on the atonement progressed, under conferences with Mr. Cotton, Mr. Norris, and Mr. Norton.[1]

§ 4. The churches of Massachusetts now retain the salutary power of disciplining and excommunicating erring members, that they had in 1640. That it may be done openly and effectually, the Supreme Judicial Court decided in 1850, in a suit brought against the Rev. Dr. Storrs, of Braintree, for slander, for having read publicly from his pulpit, by vote of his church, an excommunication.

These proceedings of the church are said to be *quasi* judicial; and those who take part in the excommunication in good faith are protected from suit, whether they make complaint, give testimony, act and vote, or pronounce the result orally or in writing. In this case the offence was fully stated. The right of dealing with a member and excommunicating him, and reading publicly the excommunication, was considered as part and parcel of the "right of the churches to use, exercise, and enjoy all their accustomed privileges and liberties respecting divine worship, church

[1] 4 Mass. Rec. 48. 2 Palfrey, New England, 395.

order and discipline," confirmed to the churches by the Statutes of 1640, 1799, ch. 87; 1834, ch. 183; and by the Rev. Stat. ch. 20, § 3.[1]

§ 5. In this case, the church appears to have proceeded against the delinquent member on its own motion. But it is not necessary for proceedings to commence with the church. It has been decided, that a church may proceed against one of its members on the complaint of one who is *not a member;*[2] and the action of the church, withdrawing fellowship, admonishing a member, or excommunicating him, is a defence, in a suit of slander or libel, not only of the minister and church-members, but also of the party not a member who made the complaint.

There are no cases defining accurately the limits of this protection of ministers, church-members, and complainants, in the matter of discipline. The ground of the protection is that the church is a tribunal to which the member has already submitted himself; and the protection is adequate without proving the entire regularity of the church proceedings.

The Court have had no occasion to say to what extent the law of privileged communications applies in such cases, nor how long the privilege lasts.[3]

[1] Farnsworth *v.* Storrs, 5 Cush. Gen. Stat. ch. 30, § 3. That the Congregational method of discipline by the local church is scriptural and efficient, see Dexter's Congregationalism, 260.

[2] Remmington *v.* Congdon, 2 Pick. 313. S. P. York *v.* Pease, 2 Gray, 282. Barrows *v.* Bell, 7 Gray, 314.

[3] As to words uttered in the course of discipline, privileged communications, and confessions, see Jarvis *v.* Hathaway, 3 Johnson, 181 : 1808. Commonwealth *v.* Drake, 15 Mass. 161, was a voluntary confession to church-members by a member. Commonwealth *v.* Knapp, 9 Pick. 496, was a confession to a minister. Fairchild *v.* Adams, 11

It is proof of the general fairness of churches in dealing with members, that there are few decisions in the reports, where the rights of members are brought into discussion. It is intimated, however, that the ecclesiastical character of the proceedings will not protect parties who employ them as a cover for malice.[1]

§ 6. In doctrine and discipline, the churches of Massachusetts are quite free. At the same time, they have taken great pains to be in agreement with the churches of England and the continent, so far forth as they were conformed to the New Testament. When the divines at Westminster, in February, 1648, had completed their confession of faith for the use of the churches of England (mainly following the synods of Dort, of 1619), it was unanimously adopted by the divines assembled at Cambridge in October of the same year.

This Westminster confession of faith and doctrine, however, was adopted, say the divines at Cambridge, for "substance of doctrine," — "excepting only some sections in the 25th, 30th, and 31st chapters of the confession, which concern points of controversy in church discipline, touching which, we refer ourselves to the draft of church discipline in the ensuing treatise." [2] Then follows the platform in seven-

Cush, 549, was a confession by a minister to a ministerial association. See post, ch. 18, § 12.

[1] For strictures on the ancient practice of confessing scandalous offences before the congregation, see 5 Christian Spectator, 229; 9 Christian Review, 416, as to discipline among the Baptist churches.

[2] The Church of England requires "unfeigned assent and consent." Hodgson *v.* Oakley, 4; Ecclesiastical Cases, 183; but very decided

teen chapters, occupying thirty-four duodecimo pages.

In May, 1658, the Congregational churches of England, assenting to the doctrinal statements of the Westminster Assembly, but objecting to the methods of church government set forth by the Westminster divines as too presbyterial, issued the Savoy Confession as the symbol for the government of their churches.

Again, the Massachusetts churches, in the synod of Boston, still keeping up their English connections, "consulted and considered," on the 12th of May, 1680, "of a confession of faith," and that which was "consented unto by the elders and messengers of the Congregational churches of England, who met at the Savoy, was twice publicly read, examined, and approved of." What little "variation we have made from the one (the Westminster), in compliance with the other (the Savoy), may be seen by those who please to compare them."

"As to what concerns church government, we refer to the Platform of Discipline agreed upon by the elders and messengers of the churches, Anno. 1648."

On the 19th of May, 1680, one week after the

changes are proposed. London Quarterly, April, 1865. The phrase "substance of doctrine," employed by Congregationalists and American Presbyterians in assenting to symbols, differs from the Scotch and English form of assent. 9 Spectator, 622; Repertory, 1858, 672. Contra, 62 Examiner, 116. The formula adopted by the General Association of Ministers in New Hampshire, 1747, is, "We continue to admit as articles of faith, the doctrines of Christianity as they are generally expressed in the Assembly's Shorter Catechism." The Vermont Association in 1795, and the Massachusetts in 1802, do the same.

Boston Synod, the General Court held at Boston at the request of several elders, in the name of the late synod, ordered the confession of faith agreed upon by the synod, (the Savoy, consisting of thirty-two chapters, occupying thirty-two duodecimo pages,) and the Cambridge Platform of 1648, to "be printed for the benefit of the churches in present and after times."

The reforming synod of 1680, and the three important synods which preceded it, were requested to assemble by the General Court. The first came together at Cambridge in 1637, and condemned antinomianism in eighty-seven propositions, after a session of three weeks.[1] The second was called at the urgent request of friends in England. It met at Cambridge, beginning in 1646, and ended in October, 1648, producing the platform; which the General Court submitted to the churches for their approval.[2] The third general synod met at Boston in the autumn of 1662. The main topics were baptism and the consociation of churches. The result covered thirty-two duodecimo pages, and its principal feature was the half-way covenant. When Messrs. John Wilson, Sr., Richard Mather, John Allin, and Zech. Symmes, on the 8th of October, 1662, presented this result to the General Court, "The Court judged meet to commend the same unto the consideration of all the churches and people of this jurisdiction, and for that end ordered the printing thereof, the original copy being left on file."[3]

[1] 44 Examiner, 321.

[2] 2 Mass. Records, 200, 288.

[3] 4 Mass. Records, 60; Congregational Quarterly, July, 1862.

The platform for the churches of Massachusetts, thus ordered to be printed by the General Court in 1680, at the request of the Reforming Synod, was considered as near the model of the Scriptures of the New Testament as could well be obtained. President Oaks regarded it "the discovery and settlement of the Congregational way, the boon, the gratuity, the largeness of Divine bounty." At the same time it was, says the President, the happy medium between "Presbyterianism and Brownism." [1] The preface of the Cambridge Platform shows how much the Presbyterians were intended to be conciliated. And the body of the platform abounds in Presbyterial expressions: much is said of church officers, synods, presbyteries, ruling elders, communion of churches in the third way, the civil magistrates' power in matters ecclesiastical, the power of privilege, and the power of the brotherhood. A compromise in matters of church government, the platform held Presbyterial elements at the first, which have been eliminated by the usage and common consent of the churches of the Congregational order in Massachusetts. The synod, the presbytery, the ruling elders, and the communion of churches in the third way, have disappeared; while the distinction between "the power of privilege and the power that belongs to the brotherhood" is nearly effaced.

As to the magistrates' power in matters ecclesiastical, Massachusetts, in 1648, was in advance of

[1] John Wise, 26.

her time. The Church of England, by the Act of Conformity, in 1662, requiring subscription to articles, assent and consent to polity as well as doctrines, undid the work of the Puritans, and went backward to Article 77 of Magna Charta, which secured freedom only to the "Church of England." While the General Court of Massachusetts, by their caution, made no inroads upon the doctrine that the Scriptures are the test of polity as well as faith; and, in order that men's belief may be voluntary and progressive, the local churches were left essentially independent.[1]

It may illustrate the confidence of the Orthodox churches in the Westminster Confession and Cambridge Platform to notice, that while the Unitarian controversy was at its height there was no call for a synod to settle a new polity, or state anew the doctrines of the atonement, the trinity, regeneration, inspiration, then so much disputed. Betaking themselves to the Word of God, ministers instructed the people as well as they could, and threw upon them the responsibility of receiving

[1] Along with the Westminster Confession, and the Thirty-nine Articles of the Church of England concerning doctrine, the Boston Confession of 1680 was unanimously commended as the public expression of the faith of the churches of Connecticut, assembled at Saybrook in 1708, by order of the General Court of Connecticut. See Dr. Bacon, Norwich Festival. The Cambridge Platform is cited by the Supreme Judicial Court in the following cases: Avery *v.* Tyringham, 3 Mass. 165, as to the necessity of ecclesiastical councils for removing ministers, Ch. 10, § 6; Baker *v.* Fales, 16 Mass. 489, as to the identity of Church and Parish, Ch. 3, § 4, and Ch. 9, § 4. In Gridley *v.* Clark, 2 Pick. 403, counsel argue the necessity of installation, from Ch. 9, § 7. The works of John Wise are cited in Baker *v.* Fales, 16 Mass. 499.

or rejecting the truth. Meeting in General Council at Boston in June, 1865, the elders and messengers of the Congregational churches of the United States have again heartily confirmed for substance of doctrine the old symbols and platforms of the fathers, as adequate to the new work opened before them in the South and West.[1]

§ 7. The Cambridge Platform is styled by John Wise the Magna Charta of the Congregational churches; later, the Supreme Judicial Court call it their constitution. It is now regarded as the common law, some parts obsolete, but all venerable, from which the Congregational churches of Massachusetts have freely drawn in constructing their polity; the confessions of faith, creeds, covenants, and church manuals, with all their liberty of choice, showing a substantial harmony in regard to doctrines and usages among the Orthodox churches of Massachusetts as great as can be found in other denominations of Christians. The Saybrook Platform has been pronounced "obsolete," and the Cambridge Platform "largely obsolete;" but suggestions for amendment have been rare. A solitary writer in the Examiner (41 : 446) advised the calling of a synod for that purpose. Other denominational manuals are much more freely criticised than the humble platforms of Cambridge and Saybrook. The Book of Discipline of the Presbyterian Church is said by the Repertory, 1856, 583, to be "unintelligible, inconsis-

[1] See Appendix H. Cong. Quar. for July, 1865. New Englander, do.

tent, and in some of its parts unreasonable." The extreme caution heretofore used in amending the book is described in the Repertory, 1859, 599. Episcopalians complain of the "obscurity and confusion" of their canons, and of their "superabundant legislative life." Church Rev. ix. 164; xii. 644. The approved changes in the Methodist polity since 1790 are quite numerous and substantial, and other radical changes are impending. Meth. Quar. 1860, 128; 1863, 475.

The principles underlying the Congregational polity, and all free government in state and church, are well considered in John Wise's Vindication, 1710. More recent descriptive definitions, showing that Congregationalism is a polity not confined to a particular system of doctrines, whether Baptist, Orthodox, Unitarian, or Universalist, may be found in the Dublin Case, 38 New Hampshire Reports; Examiner, lxvii. 215; Spectator, iii. 364; Examiner, viii. 85; Bib. Repository, 1839, 236; New Englander, 1849, 111, and Sprague's Annals, Vol. viii. Introd. The recent works of Mr. Punchard and Mr. Dexter on Congregationalism are very full discussions of its scriptural and historical relations. While Baptists and Orthodox are tenacious of Congregationalism, it is due to the Universalists to state that the Convention of 1863, disavowing any further connection with it, have adopted a modified Presbyterianism. Quite decided steps in the same direction have also been taken by the Unitarian Convention held at New York in April, 1865.[1]

[1] Examiner, May, 1865. Appendix G.

The comparative power of Congregationalism to preserve the faith and to recover lapsed churches is discussed, Spectator, iii. 386; N. Englander, April, 1846, 1853, 261; Welman's Church Polity of Pilgrims, 134. The value of the ancient Protestant confessions and symbols is enforced by Professor Shedd, Bib. Sac. xv. 661; Church Rev. i. 360. The Orthodox church creeds, confessions, and covenants of Massachusetts are many of them traced historically, Congregational Quarterly, iv. 179. For Essex County church creeds and confessions, see Essex North, 1865, 296–381. For the Baptist view of creeds and confessions, see Christian Rev. xxii. 251, and xxv. 130.

The full creed of the Universalists, for the use of ministers and people, was drawn up at Winchester, New Hampshire, in 1803, and has been sanctioned by the General Convention of 1863 as the authoritative standard of Universalist theology, and unalterable. It is in the following words: —

1. We believe that the Holy Scriptures of the Old and New Testaments contain a revelation of the character of God, and of the duty, interest, and final destination of mankind.

2. We believe there is one God, whose nature is love, revealed in one Lord Jesus Christ by one Holy Spirit of Grace; who will finally restore the whole family of mankind to holiness and happiness.

3. We believe that holiness and true happiness are inseparably connected, and that believers ought to maintain order and practise good works; for these things are good and profitable unto men.

In the absence of approved modern Unitarian creeds and confessions, we can only refer to their more ancient symbols, as they are discussed in the periodicals. The creed and catechism of the early Polish Unitarians are described, Examiner, l. 202; Repertory, ix. 180. For the English Connections of Unitarianism, see Examiner, xxxviii. 289, and xlii. 30, 1865. For the Heidelberg Catechism, see Bib. Sac. xx. 670. For the Westminster Assembly, its Confession and Catechism, Repertory, 1843, 561; 1849, 59; N. Englander, October, 1846; Christian Rev. viii. 570; Meth. Quar. 1848, 577; Massachusetts General Association of Ministers, 1843, 1844. For the Half-Way Covenant of 1662, and its effects in New England after a trial of a hundred and fifty years, Wisner's Old South, 57; Essex North, 1865, 271; N. Englander, 1846; Christian Rev. xi. 64.

It may be well to state, in this connection, some recent decisions in regard to formularies, articles, and homilies of the Church of England.

1. The courts are simply obliged to interpret them; not to reconcile them with the Scriptures, but with each other, if possible. Burder *v.* Heath, 6 Times Rep. 562.

2. They are held to require a belief of justification by faith. Saunders *v.* Head, 2 Eccl. Cases, 145. But they do not require a belief of the baptismal regeneration of infants. Gorham *v.* Exeter, 13 and 14, Jurist. Nor the inspiration by the Holy Spirit of all parts of the canonical Scriptures; nor the eternal punishment of the wicked.

Williams *v.* Salisbury, Times Rep. ix. 787. Ed. Rev. Jan. 1865.

§ 8. The bearing of a denomination is sometimes indicated by the title-page of its church manuals. Our Baptist friends have an easy, common-law aspect: "The Church Member's Manual of Ecclesiastical Principles, Doctrine, and Discipline, presenting a Systematic View of the Structure, Polity, Doctrine, and Discipline of Christian Churches, as taught in the Scriptures." Almost military precision is attained by our Episcopal friends in their "Digest of the Canons for the Government of the Protestant Episcopal Church in the U. S. of America." There is abundant instruction as to churches and their members contained in the various manuals, within the reach of every one. Whoever wishes to make an examination of the results of ecclesiastical councils, in order to learn what is the every-day working of the polity and doctrines of the Congregational churches, will be aided by the following references.

1. As to the right of a church member under admonition, or excommunicated, to ask a council, mutual or *ex parte*, see Weymouth, 1637; 1 Savage's Winthrop, 338, 2d ed.; Eastham Council, 1723; Hopkinton, 1735; Cong. Quarterly, Oct. 1863; Fitchburg, 1802; Life of Dr. Samuel Worcester, Vol. i.; Reading, 1847; Westboro, 1859.

2. As to the right of a member under admonition or suspension to vote in a church meeting on a question not relating to himself, Exeter, N. H., council, 1842, of which Dr. Braman was moderator. One

hundred years before, at Exeter, "the relative and correlative rights of ministers and people," were examined in the case of Mr. Daniel Rogers; and it was debated "whether the minister and the church should try a member, or the member try the church."

3. The subject of unadvised, hasty excommunications and admonitions, also the withholding from members letters of recommendation, as well as dismission, are examined in Wisner's Old South, 1674, 83; and in Worcester, 1820; Rehoboth, 1825; Wrentham, 1830; Dr. Waterman's church, Providence, 1832; Wareham, 1845; Church of the Puritans, New York, 1857. In the Bradford council, 1744, the first, second, and third steps of discipline are examined.[1]

4. That a member is dissatisfied with his minister, is no cause of admonition. See Reading, 1847. That he asks for a dismission to another church, "on the sole ground that he will be more edified," Chebacco, 1767; Berkley, 1830; New Bedford, April 14, 1863.

5. Creeds and doctrines are specially examined in the Haverhill Council of 1760, where the relative value of the atonement, as a whole and in parts, is looked into. In the Springfield case, 1736; Newbury 1767, Dorchester 1773, Goshen 1818, the Orthodox faith is defended. The councils held at Fitchburg 1802, Dorchester 1812, Princeton 1817, Deerfield 1813, Cambridge 1825, and Groton 1828, have connections with the Unitarian views.[2] A more

[1] For these pamphlets, see Old South Library, 861, 1112; Boston Athenæum; Historical Society's Library; Salem Athenæum, and Congregational Library.

[2] The proper certificate for a member of the Presbyterian Church is examined, West *v.* Rowland, Presbyterian, June 25, 1864.

learned, but not more hearty, discussion between Unitarians and Orthodox, on various points of difference, may be found in the periodicals. On the Unitarian side are the Anthology, commencing in 1803, the General Repository, the Christian Disciple, and the Christian Examiner; the Examiner commencing in 1824, and continued to the present time. On the Orthodox side, the Panoplist, beginning in 1804, the Monthly and Quarterly Spectators, the Spirit of the Pilgrims, and the New Englander, continue the debate to our day. The position of both parties, after fifty years of discussion, may be seen from Dr. Ellis' Papers, vols. lix. lx. lxi. of the Examiner, to which Dr. Noah Porter, jr., replies in the New Englander, August, 1858. See also Examiner, lxv. 374, May, 865, and Methodist Quarterly, 1859, 386.

6. The ancient Presbyterial method of proceeding with a church in the third or admonitory way of communion, according to the Cambridge Platform, chapter 15, is illustrated in the Salem Council, which greatly agitated the church in 1733, and several years after. See Salem Council pamphlet, also Christian Review, vi. 252, and Wisner's Old South, 104. "The carriage of members towards the minister," "and giving the minister affectionate words, but no salary," seem to have been ingredients of that notable discussion in Salem First Church.

Among modern topics arising in that venerable church are Mr. Upham's pamphlet in 1832, on the relations of churches and members, Examiner, xiii. 69

and Mr. Felt's pamphlet in 1861: "Had the First Church a Creed," in reply to Judge White.

We may infer what swarms of complex questions in theology, civil and ecclesiastical government, occupied our ancestors before coming to New England, by turning over the pages of Hanbury's Memorial of the Independents, in three closely printed volumes. Mr. Felt's Ecclesiastical History of New England, in two volumes, shows a more wholesome and practical range of topics. The churches evidently had profited by emigration, wars, and discussions. Questions in theology and polity, mainly derived from Scotland, have agitated the Presbyterians. Episcopalians have inherited their controversies from the English Establishment; while the Congregationalists of Massachusetts, it would seem, have been occupied with some of the controversies of the Eastern Church and the Latin Church, along with those of the Reformation, all conducted, however, towards the practical end of enabling the churches to do their share of the Christian work of the world in the best possible manner.

CHAPTER VII.

Ministers — Early Laws and Usages — Their Dignity, Permanent Settlement, Special Contracts — Councils for Approbating, Ordaining, Dismissing — Misconduct and Heresy — Act and Testimony of the General Assembly of the Presbyterian Church — Control of the Pulpit — Ministerial Lands, Funds — Interdenominational Topics of Discussion.

§ 1. In our opening, we alluded to Secretary Washburn's estimate of ministers, placing them at the head of his list of persons and things to be sent to New England; before "wheat, rye, barley, oats," or "pleasant fruits." Among the habits of the Puritans, partly ecclesiastical, partly religious, few have a more strange, old-fashioned look to us than their reverence for ministers. The *devout* Puritan we understand; the fighting Puritan, too, by a species of instinct: this reverential spirit towards the ministry is past our comprehension. But our object is merely to illustrate from the laws the civil and political, not the domestic, esteem in which ministers were early held in Massachusetts, and trace this esteem in the decisions of the Supreme Judicial Court, avoiding needless details.

§ 2. Ministers were early employed as ambassadors from Massachusetts to England: we have on record the modest request of the Great and General Court to the church in Boston and the church in Dorchester to loan their ministers for this purpose. This ecclesiastical usage was brought from Eng-

land, where it continued to be the habit to send bishops on embassies as late as the Treaty of Utrecht.

Ecclesiastical prime ministers were no novelty in England. The Pilgrims left Williams, Bishop of Bristol, holding the office of lord high chancellor from 1621 to 1625. It was some such qualified lord high chancellorship, held by Mr. Cotton and others, that made it perfectly natural for the General Court to invite him, together with some other ministers, to assist some of the magistrates in compiling a body of fundamental laws. In 1636, in pursuance of the invitation, they presented to the Court a model of "Moses, his Judicials, compiled in an exact method," which were taken into consideration; and, in 1641, these models were digested and submitted to the freemen, and became for a time the fundamental laws of the Commonwealth. Easy matters, as well as *hard*, seem to have been referred, in the first instance, to the ministers and elders at Boston, without any reference to the Book of Deuteronomy; which required (Ch. 17, v. 8, 9) only the hard matters, and those in the last resort, to be carried up to the Priest and the Levite at Shiloh.[1]

§ 3. In those primitive days, we may be sure

[1] The general adaptation of the Law of Moses to Colonial times is vindicated, 21 Examiner, 1. See Repertory, 1848, 75. The relation of the Mosaic to modern laws is discussed, Biblical Repository, 1843, 186. For its relation to foreigners, see 13 Bib. Sac. 564; its humane features, 10 Bib. Sac. 340, and 19 do. 368; its representative system, 15 Bib. Sac. 825.

that offences against ministers were not lightly overlooked. If any one "broke out into contemptuous carriage" towards the ministers, he was, for the first offence, openly reproved by the magistrates at some lecture; for the second offence, he might be compelled to stand two hours on a block, four feet high, on a lecture day, with a paper fixed on his breast, with this written on it, "A wanton gospeller," in capital letters.[1] Stephen Greensmith, for affirming that the ministers, except Mr. Cotton, preached a covenant of works, was put into the hands of the marshal, and enjoined to make acknowledgment to every congregation to their satisfaction. Unlucky women, who were overheard criticising, had to make formal acknowledgment on lecture day, by the mouth of their husbands; though what they said against the minister might be no more noxious than the speeches of many walking now-a-days from the meeting-house of a Sunday. Whoever, in the early times, charged a minister with a grave offence, made up his mind to leave the Colony, or make humble acknowledgments. Special alertness was employed to suppress anything that appeared in print contrary to sound doctrine: many an acre of land was voted to distinguished ministers by the Great and General Court for defending the faith against Quakers and Baptists.

Defamed by pamphleteers, they had not to wait the slow investigation of ecclesiastical councils and

[1] 2 Mass. Rec. 179. In Connecticut, the height of the stool was four feet also. 9 Ch. Rev. 524.

periodicals; but the General Court, as late as 1743, passed orders that the justices see to their suppression. The pamphlets are very exuberant in their defence of ministers. "These young men of New York," says one, "flout at the Rev. Samuel Willard; they fling at an awful desk; more than that, they fleer at the incomparable Dr. Owen, and the forever famous Dr. Goodwin, and Mr. Hooker."

It could hardly be expected that this high pitch of reverence for ministers could be maintained in Massachusetts after all the revolutions in habits of the last hundred years. With more moderate views of prerogative, we shall be pleased to find how much of the reverential feeling took refuge in the courts of justice. We have no occasion to be dissatisfied with the position and dignity of the minister, implied in any of the decisions of the Supreme Judicial Court.[1]

§ 4. We have seen already how the personal com-

[1] "The incurridging support of ministers" lay at the root of national prosperity, in the view of the Confederate Commissioners for the United Colonies. See 9 and 10 Plymouth Records. The various political, civil, and religious ties between churches and well-ordered commonwealths, may be best traced in the series of Election Sermons, delivered annually before the Great and General Court, from the early Colonial times. Mr. Thornton, in his Pulpit of the Revolution, has given us some specimens of far-seeing patriotism, taken from this rich collection. In the Artillery Election discourses, war, in all its relations and aspects, is discussed. In the Dudleian Lectures, delivered annually at Cambridge, since 1760, may be found many a vindication of Congregationalism, and its adaptation to free states, as against Episcopacy and Catholicism. See Examiner, *passim*, 2 Bib. Sac. 451. For acts, deliverances, and testimony of the Supreme Judicatory of the Presbyterian church, see Digest of Rev. Samuel I. Baird, published in 1856,

fort of the minister was cared for, by providing him a parsonage and a salary, as permanent as the land and the people could make it. No slight elements of dignity these, which the courts have taken care to support by their decisions in regard to the permanency of a minister's settlement. The law of a minister's settlement is laid down thus by Chief Justice Parsons in the case of Avery and Tyringham.[1] "It has been the uniform opinion of all the judges of the higher Courts, that where *no* tenure was annexed to the office of a minister by the *terms* of settlement, he did not hold the office at *will*, but for *life*, determinable for some *good* and sufficient *cause*, or by the consent of both parties." The clause in the Bill of Rights of 1780, allowing the town "at *all* times to elect its minister," means, "at all such times when it has no minister," said the Chief Justice.

The permanent doctrine had various and earnest discussions before this decision. It had much to do in hindering Mr. Norton's removal from Ipswich to Boston, in 1654. In 1719, when the Boston ministers approved of some member of the New North "driving on to secure the Rev. Mr. Thacher," who was then well settled at Weymouth, the aggrieved members at the New North say, "the best people in the town and country were opposed to it, as not having a good foundation and principle for the bottom

pp. 856. For a great variety of doctrinal and practical instruction forcibly expressed, see the Annual Pastoral Letter of the Massachusetts General Association of Ministers, since 1806.

[1] Avery *v.* Tyringham, 3 Mass. 160. S. P. 5 Conn. 496, 1824.

of it, and a bad precedent for all other churches." In 1773, it received another shock by the action of rival councils in the case of Mr. Goss at Bolton, and the dismission of ministers of tory sentiments in Worcester County. This led the Rev. Mr. Thacher, of Malden, to insist that no description of men, "under the government of Jews, Turks, or Pagans, were so badly off as the clergy of New England, on the supposition that a power of dismission lies with the people." [1]

The permanence of the minister's settlement, thus strenuously laid down by the Court in 1807, induced a new style of contract between the minister and people. In 1820, the people of Easton made what Mr. Justice Morton calls a "novel and peculiar" contract for the times, with their minister, the Rev. Mr. Sheldon. It was this: that the parish, in case two thirds of the members were dissatisfied, might give Mr. Sheldon one year's notice to quit, and then the tie might be dissolved by a mutual council. The Court, seeing nothing in the nature of the relation to prevent such special and peculiar agreements, held the parties bound by them in this instance; and many others. Sheldon *v.* Easton, 24 Pick. 286; Blackburn *v.* Walpole, 9 Pick. 97. [2]

[1] Mr. Thacher's pamphlet, in 1782, and the spirited reply of J. S., in 1785, are in the Salem Athenæum. J. S., written by Governor Sullivan, was apparently consulted by the Court, in Avery *v.* Tyringham, and Burr *v.* Sandwich. The reasons for a limited term of settlement are well stated in 6 Monthly Spectator, 259, 1824.

[2] The Antinomian Controversy, in Mrs. Hutchinson's time, tended to unsettle ministers; later, the Arminian. For an illustration of numerous changes from 1793 to 1850, amounting to sixteen, in the case of an

§ 5. The special contracts between ministers and people in Massachusetts cannot be described in a short compass. The Courts continue to interpret them with a view to promote the permanence and dignity of the settlement. If the parties have not agreed on the terms of dissolution, the Court require the preliminary sanction of a council, thus following the Cambridge Platform.

Even where, by the contract, the parties themselves do not appear to regard the council as a *sine qua non*, the Court have insisted upon it as an indispensable preliminary. The Rev. Mr. Cochran's contract with the town of Camden, in 1818, ran thus: "Should either of the parties unfortunately be dissatisfied with the other, they each have the right (by giving six months' notice of a wish for dismission) to call a council, whose duty it shall be, at the request of either party, to dissolve the connection; unless such dissatisfaction can be mutually accommodated." Chief Justice Parker insisted that Mr. Cochran was not dismissed for two years after the town of Camden had given him notice; because the council had not convened, and the council was a *sine qua non*, in order to save the reputation of both parties; and the salary ran until the council was held, and dismissed the minister.[1]

excellent Methodist clergyman, see Meth. Quar. 1861, 423. For tendencies towards a more permanent settlement in that denomination, see Meth. Quar. 1860, 133.

[1] Cochran *v.* Camden, 15 Mass. 304. The exact point at which salary and service end is examined in the Wareham Case, 1845, where mutual notices were to be given. Appendix, Opinion of Messrs. Eddy and Coffin. Also in the Life of Bishop Griswold,

§ 6. The rule, requiring a mutual council to be plainly and distinctly offered in cases of disagreement, was carried to its utmost limit in 1827, in the case of Mr. Thompson, who claimed his salary, and recovered it, of the town of Rehoboth. The society had voted his dismission, and turned him out of the meeting-house, after an *ex parte* council had met and recommended his dismission. [1]

where there was a steady reduction of the salary of Dr. Jarvis, in connection with St. Paul's, Boston, 1828. In Murdock *v.* Phillips Academy, 12 Pick. 244, 1831, the effect of an appeal upon the salary of a professor is discussed. For early discussions as to ministerial support, see Rev. Mr. Tufts' pamphlet, 1725, Athenæum, c. 52; also strictures of J. S. on Rev. Peter Thacher, 1785. Dr. Shepherd's Report to the Council of 1865 is an exposition of the present attitude of the subject. How the Rev. Dr. Adams, of New Hampshire, regarded a neglect to pay his salary, may be seen in Belknap's History, Vol. iii. 350, cited in the Semi-Centennial of Dr. Storrs, page 56. In the Reformed Dutch Church, it has been held that if a minister is regularly *suspended* from his ministry, by the Classis, for drunkenness, on the application of the consistory of his church, his salary ceases on the day of the decision by the Classis, though he may afterwards unsuccessfully appeal to the particular synod and the general synod. Reformed Dutch Church of Albany *v.* Bradford, 8 Cowen, 457, 1826. A minister of the Methodist Episcopal Church is not allowed by the discipline to sue for his salary.

[1] The *ex parte* council of our day has succeeded to the supervisory work laid down in the Cambridge Platform for ruling elders, synods, presbyteries, civil magistrates, and churches "in the third way of communion." How reluctantly the *ex parte* council was admitted as such substitute appears in the Hopkinton Council, 1735. "It is not agreeable to the Congregational constitution." It is allowed, "considering the lamentable degeneracy concerning consociation and communion of churches" in the third way, as declared in the "renowned synods;" as also the "great opposition made to the practice of those principles." Cong. Quarterly, Oct. 1863, 346. Dr. Samuel Worcester appears to have had misgivings, in 1802, in regard to *ex parte* councils, which he afterwards overcame. Before the Cambridge Platform of 1648, the *ex parte* council was in use.

He had been invited to attend this *ex parte* council; he had also a copy of the charges against himself. The only reason that prevented his society from offering him a mutual council, in the first instance, was that he had given out in writing beforehand that he would have nothing to do with councils. So very literal an enforcement of the rule that the contract is for life, and can be dissolved only by consent or by a mutual council, did not please the catholic congregation of Rehoboth. They continued to shut Mr. Thompson out of the meeting-house, and refuse him his salary. At the same time, they employed a blind diligence to rid themselves of him, which, owing to other irregularities, did not succeed. How long the contest lasted, we cannot say. Mr. Thompson went out of court with his salary a second time. He is described by Chief Justice Parker, with extra-judicial warmth, as an instance of that infatuated class of ministers who insist upon their strict legal "rights again and again, after a settled hostility has existed for years; who continue to preach to a few people, to entitle themselves to recover their salary rather than with any expectation of doing any good; council after council having given their solemn advice in favor of a dissolution, though technically informal."[1] The law of settlement now is the same that it was in 1827: the difficulty of dismissing a

[1] Thompson *v.* Rehoboth, 7 Pick. 163. The Rehoboth Council, 1825, at large, may be found in Old South Library, 1112. The charges made are "lording it over the heritage," and "general severity."

minister, who is unwilling to go, with or without a mutual council, is not diminished.

The questions at issue in these cases are not criminal but mixed questions, partly theological, partly in regard to ministerial discretion and conduct. That the people know how to express their disapprobation at the introduction of certain topics, will be seen more readily from council pamphlets than from stately histories and biographies.

For discussions incident to the Newlight preaching, see Middleboro' Council of 1745;[1] for Masonry, see Wrentham, 1830; New Measures, Wareham, 1845;[2] Slavery and Temperance, Hollis Street, Boston, 1840; Exeter, N. H., 1842; Church of the Puritans, N. Y., 1857.[3]

[1] The Great Awakening in New England, under the preaching of Edwards, Whitefield, and others, is discussed by the Unitarians, 43 Examiner, 374, and 44, 367; by the Presbyterians, in connection with the Moderates and Seceders of Scotland and Ireland, Repertory, 1835, 217, and 1844, 410. The New Englander for May, 1853, gives some of the ecclesiastical effects of the Awakening in Connecticut. For the general effect on theology, see Bib. Sac. July, 1865. That Harvard and Yale were both opposed to Whitefield, see Bib. Rep. 1841, 177, 374, and 1842, 187.

[2] The Repertory for 1835 is very full on the new measures. The Bib. Sac. 1859, 279, maintains that certain aspects of doctrine have been advanced by each extensive revival of religion. May it not also be true that international revivals are intended to prepare the churches for dark times. The great awakening of 1740 preceding a long series of wars, and the revivals of 1858, would favor the theory. Authentic materials on revivals may be found in the reports of the Massachusetts Ministerial Association since 1806. Revivals occurring in Lent are witnesses to Apostolic Christianity, says the Church Review, 12, 599. Years remarkable in Massachusetts for revivals, are 1680, 1727, 40, 55, 90; 1800, 11, 23, 30, 43, 58.

[3] For formidable ecclesiastical explosions produced by slavery, see Methodist Quarterly, 1849, 282, and 1851, 396. Christian Review, x.

Various are the charges examined in the council pamphlets against ministers, having grounds personal, political, and domestic, apart from doctrine and measures. Their lessons for the heedless, the hard, the sensitive, and especially the talebearer, may be studied to advantage by those who are neither clergymen nor sons of clergymen.[1]

§ 7. A minister, obliged to vindicate his character from slanderous charges, will find that the Court entertain a high sense of the dignity and proprieties of the ministerial office. One Briggs was sued by the Rev. Calvin Chaddock for uttering the following opprobrious words: "He (meaning the Rev. Mr. Chaddock) went out a getting hay, and he got so drunk he could not get home." Briggs's counsel, taking advantage of the spirit of the age, insisted that the words were not actionable *per se*. Spoken of a clergyman of the established Church of England, whose estate was higher, and who had prospects of preferment, the words might be actionable; but not so when spoken of a Congregational minister, who cannot be said to have any tenure of office. Besides, the words, "he got so drunk," indicate not

479, xi. 114, xv. 271. Princeton Repertory, 1847, 427; 1849, 39, 582; 1858, 556; 1861, 322, 547, 758; 1862, 499; 1863, 496.

[1] Brimfield, 1801; Ipswich, 1805; Hingham, 1807; Dr. Allen Pittsfield, 1807; Manchester, 1822. A very minute supervision of ministers is cultivated by the Methodist discipline. In the Universalist Convention of 1863, something in this direction is recommended. In the Established Church of England, mere drunkenness and incontinence have a fatal monopoly of the cases reported. Burden *v.* Spear, 1 Eccl. Cases, 39; Fernall *v.* Craig, 5 do. 557; Bonwell *v.* Bp. London, 4 Times Rep. 815.

a habit, but a single act of frailty, not inconsistent with the general good character and virtuous habits of a minister. Chief Justice Parker showed that the audacity of the bar made no impression on the bench. He ruled that the office of minister in Massachusetts requires a pure, and even unsuspected, moral character; that a charge of the kind would certainly expose a minister to dismission from his people; that the words were highly actionable, and needed no colloquium or allegation that they were spoken of the reverend plaintiff in his ministerial character; that the law will not imply that a minister in Massachusetts may be intoxicated when not in the discharge of his ministerial functions; for it holds him at all times to be under the control and the obligations of the religion which he professes to teach.[1]

§ 8. As to the licensing or approbating of candidates for the ministry, it has of late devolved on ministerial associations, under a protest, however, that the right was originally in the churches themselves.[2]

In the matter of ordaining ministers, our Massachusetts statutes recognize the validity of ordination by all Christian denominations; following the act of

[1] Chaddock *v.* Briggs, 13 Mass. 248.

[2] John Wise's Vindication, xvii. 39, 40. Woburn Petition, 1653. Cumming's Ecclesiastical Dictionary, Approbation, License. For the history of ministerial associations, see Congregational Quarterly, April, 1860, and July, 1864. Rev. Thos. Gray, of Jamaica Plain, a student of Dr. Stillman, in 1793, was the first minister approbated by the Boston Association. 43 Examiner, 251. In the Essex North, Nath. Howe, 1787.

13 Elizabeth, ch. 12th, which recognizes the validity of "other forms of institution, consecration, or ordering," than the Episcopal. In the Episcopal churches of the United States, the Act of Uniformity, 14 Charles II. 1662, ch. 4, § 13, is followed, requiring "Episcopal ordination." [1] In the Congregational churches, the ordaining of ministers belongs by usage to ecclesiastical councils, though it has been exercised in some instances by ministerial associations, under protest, however.

The questions propounded to candidates by ecclesiastical councils might almost be inferred, if the date of the council were given. At Eastham, in 1723, the first and easiest of the ten questions to be answered extempore by the Rev. Mr. Osborn, was the following: "How came we to be involved in Adam's guilt, seeing we never chose him for our head?" [2]

§ 9. Thus far, on the side of the Court, we have noticed a regard for the permanence and dignity of the ministry in all respects, inducing a cautious refusal to pronounce their contracts broken until a body more competent than themselves to examine

[1] The memorial movement of 1853 seems to have been an effort toward amending the invidious act of 14 Charles II. Church Review, 11, 288. Repertory, 1854, 390. Also the spirited protest of Dr. Tyng and other clergymen of New York, to Bishop Potter's pastoral letter, June, 1865.

[2] Eastham Council, Old South Library, 861. The Bishop of Exeter, in 1847, subjected Mr. Gorham, who had been thirty-six years in the ministry, to an examination of thirteen days, to ascertain his views on the baptismal regeneration of infants. A hundred and forty-nine questions were required to be answered.

these mixed questions had first passed upon them; refusing, in one instance, to enforce the result of a council when the grounds of the result were not deemed by the Court substantial. In 1832, they refused to set aside the contract of Mr. Sheldon with the parish of Easton, because he had not replied to communications from committees of the parish, and had refused to make exchanges with certain ministers of the neighborhood.[1]

There are grounds, however, for which a minister may be dismissed without the ceremony of calling an ecclesiastical council. Should he appear in court claiming his salary, after being dismissed on such grounds, the Court will not send the parties away to a council, but will administer what justice it can, with the aid of the jury.

As laid down by Mr. Justice Morton, they are two in number. First, a gross and wilful neglect of his obvious and essential duties; second, grossly immoral or criminal conduct. As to a third class of ministerial offences, — to wit, a substantial and essential change in doctrine, amounting to the

[1] The question of a minister's right to control the exchange of pulpits with his brother ministers was agitated some years before it received judicial sanction, in Sheldon *v.* Easton; indeed, it was an important item in most of the Unitarian contests. It is alluded to as a charge against Mr. Burr, at Sandwich. In the case of Dr. Codman, of Dorchester, three councils were called to settle the question in 1812. Panoplist, June and July, 1814; 59 Examiner, 203. The parish of Cambridge were willing to control the exchanges, hymn books, and evening meetings of Dr. Holmes, their pastor, in 1827. 2 Spirit of Pilgrims, 559. In the Groton Council, 1828, this subject was agitated. In 1845, 38 Examiner, 271, the control of exchanges appears to be conceded to the responsible minister of the parish.

adoption of a new system of divinity, — they can only come before the Court through the result of an ecclesiastical council.[1]

In the law courts of Massachusetts, there appear to be no trials involving charges of heresy. Without invading the privacy of theologians, we will mention two prominent cases in the Presbyterian church, where grave departures from theological standards were publicly discussed.

The Rev. Albert Barnes, of Philadelphia, in 1836, was acquitted by a vote of 134 to 94, by the General Assembly of the Presbyterian Church, then held at Pittsburg, on charges that he had denied a limited atonement, physical depravity, and the imputation of Adam's sin. On previous trials before an inferior church court, Mr. Barnes had been suspended from the ministry on the strength of these charges. About the same time, the Rev. Lyman Beecher, D. D., was tried by the Synod of Cincinnati on charges of the same description, and acquitted.[2] These proceedings were accompanied

[1] Sheldon *v.* Easton, 24 Pick. 281, 1836. A parish, however, cannot set up any one of these three grounds of defence, when sued by a minister for his salary, unless it was stated as a ground for his dismission. Whitman *v.* Cong. Socy. 2 Gray, 306. In New York, the decision of a council, or other ecclesiastical court, seems to be a necessary preliminary in all cases, however flagrant. Reformed Dutch Church *v.* Bradford, 8 Cowen, 457, 1825. The Master of the Rolls recognizes the distinction of "vices tolerable in a minister, and intolerable." D'Augars *v.* Rivaz, 3 Times Rep. 110; following the principle of Sheldon *v.* Easton.

[2] What makes a heretic, see 23 New Englander, 324. What a schismatic, D'Augars *v.* Rivaz, 3 Times Rep. 110; Dr. Beecher's Case, Repertory, 1837, 216, 364; Examiner, xix. 116; Life of

by the act and testimony of a convention of Presbyterian ministers and elders held at Philadelphia, condemning sixteen erroneous propositions supposed to be held by Congregationalists of New England generally, but more especially by synods of the Presbyterian Church in Western New York and Ohio, which were originally established by emigrants from New England, under certain compromises as to church polity made between the General Association of Connecticut, in 1801, and the General Assembly of the Presbyterian Church. At an early day it had been said of Connecticut, "the people are strict Congregationalists, a few more large Congregationalists, and some moderate Presbyterians."[1]

Without notice or trial of any kind, these Western synods, comprising sixty thousand church members and upwards of five hundred ministers, were summarily exscinded by the General Assembly of the Presbyterian Church in the year 1837; and the exscinding acts were soon followed by legal proceedings in the Supreme Court of Pennsylvania, which divided the Presbyterian denomination into two parts — the Old and the New School; the Old School retaining the name and property of the denomination, on the ground that they had adhered to the original organization.[2]

Dr. B.; Mr. Barnes' Case, Repertory, 1836, 447; Spectator, iii. 292; Examiner, xxi. 187; Dexter's Congregationalism, 288.

[1] Palfrey, iii. 428. The General Association of Massachusetts, as well as Connecticut, for many years acted under this compromise of 1801. As early as 1745, overtures were made to the Mass. Convention of Ministers, by the Presbyterians.

[2] Com. *v.* Green, 4 Whar. 531.

The Act and Testimony of 1836 has a precedent in the Scotch Act, Declaration, and Testimony of 1736, by which the mother church was divided into more than two parts.[1] In their reasoning in regard to the denominational compromise of 1801, the exscinding divines seem to have been carefully followed by the politicians who had charge of the repeal of the Missouri Compromise in the year 1854. After thirty years of trial, divines and politicians discover that there were flaws in the original acts of compromise, both the ecclesiastical and the political.

In the year 1863, the ingredients that entered into the exscinding act of 1836 are stated by an Old School Presbyterian to have been thus various and compounded: "They were partly diversity of principle on matters of doctrine, and partly diversity of principle and practice on matters of ecclesiastical organization; partly difference of views as to the import of the formula of subscription to the confession of faith; partly conflicting views as to the best method of conducting missionary and other benevolent operations; and partly, no doubt, alienation of feeling on the part of leading men on both sides." [2]

As to errors in doctrine set forth by the Act and Testimony of 1836, and re-stated in 1863, as the foremost among the grounds of excision, it has always been denied that they were prevalent in the

[1] Repertory, 1835, 201. For the minutiæ of the Exscinding Act, see Repertory, 1837, 407; 1840, 92; Moore's Digest, ch. 8; Spectator, vii. 152; ix. 597; x. 338; Bib. Repository, 1838, 219.

[2] Repertory, 1863, 454; 1846, 593.

exscinded Presbyterian churches. Whether prevalent or not, discussions as to Adam's sin, imputation, and other cognate doctrines, intended for the education of the race, proceed among theologians without reference to acts and testimonies of 1736 or 1836.[1] Meanwhile, Congregationalists of Massachusetts take notice, from their experience in compromises, that their own simple polity is more valuable than they themselves had ever supposed it to be. And they further take notice, that its salutary influences for religion and liberty are best promoted when Congregational churches are not too closely allied with the State or with Presbyterianism.[2]

§ 10. In general, it may be said that the interval from 1800 to 1836 is not rich in defences of the Congregational polity. Not until 1843 did the General Association of Massachusetts Ministers utter encomiums on their polity. See Minutes, 1843 and 1844. New England ministers, as a body, made no

[1] Various points of the Old and New School Controversy were discussed in acts of synods and presbyteries prior to 1825. Then came the arguments of Dr. Taylor and Dr. Tyler, in the Christian Spectator. The discussions between Professors Hodge and Park, involving all doctrinal points of difference between the Presbyterian and New England theologians since the great awakening in 1740, may be found in the Princeton Repertory and Bibliotheca Sacra, 1850, 1, 2; for an abstract, see Examiner, lii. 309.

[2] To what extent Presbyterians, and other denominations, have been built up by Congregationalists, see 3 Spectator, 390; New Englander, Nov. 1855; 4 Cong. Quarterly, 39. Since 1852, various spiritual solicitudes' in regard to New England theology, are indicated by the following papers: Tyler *v.* Harvey, Rep. 1855, 712; Wallace and Dana *v.* New School, Rep. 1857, 159; *In re* Beecher and als. Rep. 1857, 572; *In re* Hartford Ordination, Rep. 1861, 570; Church Review, v. 349; xiii. 48.

resistance to the process of merging Congregationalism into Presbyterianism, which was silently going on under the auspices of the General Associations of Connecticut and Massachusetts. The ill feeling attending the excision of 1837 was insensibly communicated to all denominational controversies. Claims made by Baptists, Methodists, and Episcopalians to apostolic succession, and other private advantages in doctrine and polity, were treated with more than usual harshness. But for the last twenty years it may be said, that all interdenominational disputes, unlike the international, have decreased in number and severity. We are indebted to the Bib. Sac. since 1861, for statements of the doctrines held by Baptists, Methodists, Episcopalians, Presbyterians of the Old and New School, and Congregationalists. Those statements, made by each denomination in its own behalf, show how general is the agreement among learned divines; also how very great is their diligence to reconcile Divine sovereignty and man's free agency.

Those who are in search of materials for future interdenominational conflicts will be aided by the following outline map of some of the battle grounds, since A. D. 1800, where ammunition may be dug up with little labor or expense for many years to come.

1. In a contest with *Episcopalians*, resort may be had to the Church Review, commencing in 1848, for the later vulnerable points in that respected denomination of Christians. For earlier matter, the pious combatant will go to the Monthly Christian

Spectator for 1824, 36, 82, 140, where Bishop Hobart's Strictures on the Bible Society are examined. For his Strictures on Ministerial Associations, see Dr. Turner's Autobiography, ch. 7. In the Spectator of 1828, will be found a review of his sermon at the consecration of Bishop Onderdonk of New York. The Quarterly Spectator, vol. vi. 1834, contains an examination of the claims made by Bishop Onderdonk of Pennsylvania, in behalf of bishops as successors of the apostles. Vol. vii. and the Princeton Repertory for 1835, 239, 574, treat the same subject. Also Repertory, 1843, 386, and 25 Examiner, 190. The Apostleship a Temporary Office, Repertory, 1849, 355, 393, 542; 1856, 1. A scrutiny, more denominational, was called out by Rev. Calvin Colton's book. See 8 Spectator; 1 Christian Review, 552; and 11 Repertory, 390. Mr. Noel's retirement from the Church of England is noticed, New Englander, 1849. The Church Review Strictures are discussed, New Englander, 1853. The Oxford Tracts, the Fathers, and their value, are discussed from 1835 onwards. Repertory, 1837, 84; 1841, 311, 450; 1846, 137. Potts *v.* Wainwright, Methodist Quarterly, 1845, 153. Huntington *v.* Sturtevant, Boston Evening Traveller, June, 1865.

2. As to the *Methodist* polity, strictures upon it are rare in the Episcopal reviews. None are to be found in the seventy-five volumes of the Christian Examiner. The most vigorous is in the Christian Spectator, 1828, 509; 1830, 483. Christian Review, vi. 45, and vii. 409. That there are increasing coincidences between moderate Calvinists and

Arminians, as to the Fall, see Meth. Quar. 1861, 647. As to the atonement, 1860, 390; as to the origin of of evil, 1860, 662. A coincidence with other denominations is extending in regard to the class meeting and its uses, 1862, 599; the camp meeting, 1861, 582; psalmody, 1861, 491; Bib. Sac. vols. xvi. xvii.; lay representation and itineracy, Meth. Quar. 1863, 475.

3. Should it become necessary, before the millennium, to reëxamine the word *Baptizo*, Professor Stuart in the Biblical Repository, 1833, and Dr. Edward Beecher, 1840 to 1843, should be consulted, with a constant reference, however, to the Christian Review, in twenty-eight volumes, especially the 28th. Strictures on close communion may be found in the Princeton Repertory, 1850, 557; a defence of it, 16 Chris. Rev. 210; Bib. Sac. 1862, 133. The Campbellites and their doctrine are discussed, Bib. Rep. 1839, 130, 295; also 1840, 202, 472; Christian Review, xx. 146, and xxi. 481.

4. If our esteemed friends, the *Presbyterians*, are to be attacked, the materials may be found, probably, in the two Digests of Acts and Deliverances of the two General Assemblies, by Mr. Moore and Mr. Baird. The Methodists admit their exposure once in fifteen years to cleavage or secession, on grounds of polity. It would seem that the Presbyterian denomination, under the best Scotch administration, is subject to like accidents. The Repertory, 1835, 201; 1844, 403; 1846, 29, describes the Moderates, the Reliefs, the Seceders, and the Anti-burghers; their separations commencing in 1736, and concluding

with the great Free Church secession of 1843. For the Presbyterian Church in Ireland, see Repertory, 1844, 199.

The tendency to cleavage, in the American branch of the Presbyterian Church, was early developed in 1743, in the matter of the New York and Philadelphia Synods, Repertory, 1837, 557, and completed in 1837, by the excision of the New School Presbyterians; and again by the excision of the Cumberland Presbyterians. See Repertory, 1844, 581; 1847, 495. From the Repertory and Digest, the student, who is curious in such matters, might furnish his museum with every pattern of armor, offensive and defensive, that has been employed since 1830 in ecclesiastical warfare.

5. The *Universalists*, agreeing in the final holiness and happiness of all men through Christ, are not agreed as to future punishment. Some have Orthodox leanings, others Unitarian. See Univ. Quar. xix. 379; Rev. Elhanan Winchester's case, 1780; Hist. Brown University, 333. Tendencies towards the belief of annihilation are noticed, Methodist Quar. 1858, 148, 410; Rev. J. E. Walton's case, Portland Christian Mirror, Aug. 1, 1865. Their efforts to do away capital punishment, Bib. Sac. iv. 270. The historical connections of the denomination are traced, Examiner, Mr. Murray, viii. 250; Dr. Chauncey, xliv. 367. The meaning of everlasting, as applied to punishment, Spirit of Pilgrims, ii. 405; Examiner, ix. 20; x. 34, 166; xii. 97, 169; Univ. Quar. ii. 133; iv. 16. Doctrinal grounds are examined, Bib. Rep. 1838, 70; Ex-

aminer, lxvii. 120. Doctrinal and personal grounds for renouncing Universalism are discussed, Repertory, 1843, 507.

6. In matters of public controversy, the *Roman Catholics* have mainly fallen into the hands of Episcopalians and Presbyterians; while Methodists, Baptists, and Congregationalists have, for some reason, kept aloof. Christmas *v.* Canada Priests, Spectator, 1829; Brownlee *v.* Varela, and others, New York, 1834. The Hughes and Breckenridge debate may be found, Repertory, 1837, 238, 326, 487. The Campbell *v.* Purcell, Examiner, 23, 53. Kirwan *v.* Hughes, Repertory, 1848, 617. The School Question and Romanists in New York, Christian Review, xviii. 441. The Jesuits, Repertory, 1845, 239. Mr. Brownson's Reasoning, Examiner, 1850; his Career, Repertory, 1845. Apology for Perversions from the Episcopalians to the Romanists, Church Review, 13. For calmer discussions of Roman Catholic doctrines and usages, see Spectator, 7; Bib. Sac. ii. 451 and 757; Repertory, 1856, 601. The Council of Trent is examined, Repertory, 1834, 59; Am. Theolog. Rev. iv. 583; Christian Review, xxi. 112. The questions of Liberty and Romanism, Meth. Quar. 1860, 106; Church Rev. viii. 13; Am. Theo. Rev. iv. 352. The Pope's Encyclical Letter, 1865, see Living Age.

7. The controverted characters of various *Protestant leaders* are discussed as follows: Calvin, 2 Bib. Sac. 329; 43 Examiner, 161; 69 do. 73; Repertory, 1850, 417; Meth. Quar. 1850, 571; Universalist Quar. xvi. 113. Servetus, Repertory,

1836, 74; Bib. Sac. iii. 51. Armenius, Bib. Rep. 1831, 226; Examiner, lxviii. 393; Meth. Quar. 1857, 345.

8. As our times point to works of benevolence and piety at home and abroad, waiting for the co-operation of all denominations, the reader will gratefully recognize the tendency of the learned quarterlies to promote a better union among Christians. Since 1830, no small share of ingenuity has been expended upon this topic. The early plans for union are discussed, Repertory, 1836, 11; the later plans, 1846, 559; 1860, 122; Bib. Rep. 1838, 86, 363; Christian Review, iii. 209; vii. 342; xii. 155; Meth. Quar. 1858, 427, 538; Bib. Sac. 1865, April; Mass. General Association, 1844, 27. As to the early and simultaneous building of churches, hospitals, and schools in Christendom, Meth. Quar. 1858, 457. As to the danger of separating piety and philanthropy, New Englander, 1855; Repertory, 1862, 601. As for Bible, tract, missionary, and other associations, the quarterlies are full of them and their beneficent works. In the past, for many years, their movements have been adjusted, after painful discussions, so as not to disturb compromises that good men had entered into in regard to human slavery. It is matter for congratulation, that in the time to come Christian associations, relieved of this mischievous ingredient, will be able to pursue their work, encountering merely such legitimate doctrinal and denominational prepossessions as may remain among good men after this poor man's war for liberty is concluded.

§ 11. Having made a long digression concerning heresy and controversy, with the desire of promoting the peace and dignity of all Christian ministers, let us return to our subject.

The courts of Massachusetts have not regarded ministers as a separate class, all holding the same rank, according to the Presbyterian polity; nor as a separate class, with various grades of dignity, according to the Romish doctrine; but as lay brethren, who may occasionally need the aid of the court to interpret the contracts that they have made with the people; and then only in extremities, when the minister and people are both seeing how they may best part company.

The minister pursues his vocation as a layman; exempt by the law from no service or burden due the Commonwealth, except watch and ward, military and jury duty;[1] endowed with no privilege, except that of obtaining a settlement as an inhabitant of a town with rather more ease than a layman; procuring thereby for himself and family a place in the almshouse, in cases of extreme poverty, earlier somewhat than a layman could; always provided, however, he is a "settled, ordained minister of the gospel."[2] From the unhappy case

[1] Genl. Statutes, ch. 23, § 6; ch. 13, § 9; ch. 132, § 2. Until 1829, ministers were exempt from taxation.

[2] Genl. Statutes, ch. 69, § 1, Bellingham *v.* Boylston, 4 Cush. 553; Leicester *v.* Fitchburg, 7 Allen, 90. On demission of the pastoral office, see Repertory, 1847, 480; 1859, 360. That a minister of the Established Church cannot of his own authority secede, see Barnes *v.* Shore, 4 Times Rep. 593. Horne Tooke was the occasion, in 1779, of English beneficed ministers being excluded from the bar, and, in

of Bellingham, a new right to town charity seems to be acquired by a minister at every new settlement, without installation or ceremony of induction; independent, too, of the preacher's intention of remaining or of the people's intention to keep him.[1]

§ 12. There is another function of the minister that may be worth describing. While the church is not a corporation, or *quasi* corporation, the minister, by various decisions, is a corporation sole; *i. e.*, a corporation composed of one person.[2] The dignity of being a corporation sole does not attach to all ministers as soon as licensed; but only to such as are settled over parishes, where the minister has the title in himself of the parsonage lands. He holds them as such sole corporation, for the use of himself and his successors in office; at his death or removal, the fee of such lands is in abeyance until his successor is appointed.[3] While he is incumbent, he can convey such lands, with the assent of the parish; if he convey them without such assent, his successor may treat the conveyance as a nullity. During a vacancy, the parish alone is entitled to the rents and profits.[4]

1801, from Parliament. Before that, both careers were open to the clergy. Law Mag. and Rev. xiii. 1.

[1] In this case, the preacher was on a probation of six months, and resigned twenty days before it expired; yet he acquired a settlement in the town, and entitled to its charity. Various statute distinctions as to ministers are examined in the chapter on marriage, c. 14, § 2.

[2] Brunswick *v.* Dunning, 7 Mass. 447.

[3] Weston *v.* Hunt. 2 Mass. 500.

[4] Gen. St. ch. 31, § 5. Cheever *v.* Pierson, 16 Pick. 272, 1834, and

Whatever dignity may attach to a few ministers from being sole corporations, is fast diminishing by the sale of ministerial and parsonage lands, and by statutes vesting lands of this description in the religious society directly, in preference to the minister, — statutes partly intended to reach the large property vested now in the Roman Catholic bishop of Massachusetts, who, by holding the entire ecclesiastical property of his denomination in his own hands, is erecting himself into a powerful personage, if not a corporation sole, alongside of the single-handed Congregational bishops of the diocese.[1]

§ 13. Next to the religious society, the corporation in which Congregational ministers have most personal interest is that which holds the "ministerial fund." In almost every elderly parish of the Commonwealth, these corporations have been created and amended at the rate of half a dozen per annum

cases cited. As to sole corporations and *quasi* corporations, see Overseers *v.* Sears, 22 Pick. 122; Taylor *v.* Edson, 4 Cush. 522. In Maine, it has been held that a town, by vote, cannot divest the minister of his title to the ministerial lot. Nor can they object to the regularity of his settlement after a ministry of thirty years. Bucksport *v.* Spofford, 3 Fairfield, 487.

[1] Statutes 1855, ch. 314, and 1858, ch. 133, are repealed by General St. 1860, ch. 182. It would seem that a burying-ground conveyed to the bishop, "his heirs, and assigns," is not within the statutes which forbid a conveyance to him "and his successors in the ecclesiastical office." Fitzpatrick *v.* Fitzgerald, 13 Gray, 400. In New York, the Catholic property question was discussed in the Senate, 1855; see also the letters of Archbishop Hughes and Mr. Brooks. As early as 1831, this subject was examined in Massachusetts. See House Documents, Nos. 16 and 18. For the Connecticut law of 1855, in regard to Catholic property, see 9 Church Review, 305.

since 1790, so that now they must be some hundreds in number.[1] They have readily obtained leave to sell the ministerial lands and other property, under restrictions as to paying the income only "forever" to the support of a "gospel minister of the Congregational denomination," in the various towns. As in the case of Andover, some trustees are bound to take no compensation from the fund.[2]

There are few classes of corporations so numerous, yet so noiseless; seldom appearing before courts by suit, bill, mandamus, *quo warranto*, or any other process. It must not, however, be inferred that the courts relax their scrutiny in regard to these funds. In a case that came before the court of Maine, a minister was held to a very strict compliance of all conditions of time, place, and doctrine, to entitle himself to the benefit of one of these ministerial funds.[3] At the same time, a reasonable construction is given thus: it has been held that a fund left for the support of the gospel in "the south part of the town" did not necessarily confine the religious society to the use of the old meeting-house there.[4] These *quasi* corporations, with their changes and peculiarities, grow out of the ordinance

[1] For lists of charitable, literary, and religious incorporations since 1780, including ministerial fund associations, see Senate Doc. 90, for 1836; House Doc. 32, for 1848. For strictures on. funds, see 7 Spec. 588.

[2] St. 1810, ch. 49.

[3] Hunt *v.* Perley, 34 Maine, 32.

[4] Tibballs *v.* Bidwell, 1 Gray, 399; see also Hawes Place *v.* Trustees, 5 Cush. 454.

of 1646, authorizing the purchase of "an habitation for the use of the present preaching elder, and so from time to time to his successor," confirmed by the laudable practice of giving a lot "for the ministry" in the first settlement of the towns of Massachusetts, an early and a steady policy that pointed to a stable ministry.[1]

[1] 2 Mass. Rec. 217; Lanesboro *v.* Curtis, 22 Pick. 320. For Amherst Joint Stock Parsonage Co., see St. 1854, ch. 366; Churches and Parsonages, N. Englander, 1854, 276. Applications for ministerial fund corporations have greatly diminished since St. 1853, ch. 389; Gen. St. ch. 30, § 25. An instructive decision as to pledging ministerial funds *in futuro* may be seen, Peckham *v.* Haverhill, 19 Pick. 559; for another, as to repairs made by the minister on the parsonage, see Greene *v.* Malden, 10 Pick. 499.

CHAPTER VIII.

Deacons — Their Rights, Duties, Prerogatives — Corporate Powers — What Contracts they may make — Why the Church was not incorporated specifically.

§ 1. Having treated of the minister, his rights and dignities, we come to the ecclesiastical officer next in rank, to wit, the deacon.

The Scotch Commissioners of 1643, it is said, spent ten days enforcing upon the English Independents their Presbyterial views in regard to the ruling elder. The ruling elder of the Cambridge Platform, chapter eight, had prerogatives that placed him far above the deacon, and these prerogatives were claimed for him by Mr. Wise and Mr. White; but throughout Massachusetts, for one hundred and fifty years, the ruling elder has been merged in the deacons. Controversial pamphlets, in 1725, refused to regard the ruling elder as anything more than a "human creature." [1]

In the eye of the law, deacons in Massachusetts are corporations, or *quasi* corporations. They are made so by statute, 1754, for the purpose of taking

[1] For the divine origin of the ruling elder, see various Presbyterian books. Congregational Quarterly, April, 1863. Monthly Spectator, v. 240; ix. 281. Wisner's Old South, 79. Dexter's Congregationalism, 110. Repertory, 1840, 511. The want of ruling elder was one ground of the excision of 1837. Deacons and committee-men attended the General Assembly, unordained men. The status of the ruling elder, in 1860, was by no means ascertained in the Presbyterian Church Repertory, 1860, 185, 449. 702.

and holding, for the church, in succession, all grants and donations, whether real or personal property. The faculty of taking and holding property for the church is attached to them, *ex officio*, and ceases when they cease to be deacons, from any cause.[1]

The claim of the deacon to prerogatives is discussed freely in the various manuals. In the Middleboro' Council pamphlet, 1744, to be found in the Old South Library, the deacon is not allowed to be "standing moderator" of the church, on the death of the pastor. "A moderator is a matter of convenience. Deacon Barrows had no right to dissolve the meeting at the Widow Woods, because *he* had not called it. It is the most unreasonable thing in the world, that the church could never have another meeting, or do anything, without *his* consent. It is an idle notion, that churches, in every punctilio, are obliged to conform to the rules of civil society." At Lancaster, in 1833, Mr. Carter claimed, that a deacon, during the term of his office, could not be removed by the brethren of a church, without an ecclesiastical council.[2]

To return to their civil functions, deacons sue and are to be sued, in case of dispute as to the ownership of church property. The Ded-

[1] Page *v.* Crosby, 24 Pick. 211. Parker *v.* May, 5 Cush. 336. Lowell *v.* Bancroft, 4 Cush. 281. Elders, in law, are little regarded. In this last suit, brought originally by elders and deacons, the elders were ordered to be stricken out.

[2] The deacon's tenure of office is much discussed in the New York Church of the Puritan controversies, 1857. A preference is there expressed for annual elections. The amotion of officers in the Dutch Reformed Church is discussed in Doremus *v.* D. Ref. Ch. 2 Green's,

ham case, Baker *v.* Fales, was a suit between two sets of deacons. The Brookfield case, Stebbins and Jennings, also; so of Sawyer and Baldwin, Page and Crosby. When the church is dissatisfied with the deacons, they may be sued by a committee of the church, as in the case of Weld and others *v.* May.[1] In case of trespass to the property of the church, its records, or communion furniture, the deacons are the parties to bring suit.

§ 2. The corporate powers of deacons are limited "to taking gifts and donations, and holding property in succession for the benefit of the church." They cannot convey lands without a vote of the church.[2] And it has been strongly intimated that they cannot dispose of the personal property of the church without such vote.[3] Nor can they give a promissory note to bind their successors, or the church; or enter into any executory contracts, negotiations, or speculations, though they hope they may prove profitable to the church.[4]

It has been further held, that neither the deacons nor the church are liable to suits from the parish in regard to church funds. Nor can the attorney general, in behalf of the parish, institute such proceedings, on the ground that church funds are a

Ch. 332. The Presbyterian Old and New School Assemblies express a decided preference for a life-eldership.

[1] 9 Cush. 181.

[2] Gen. St. ch. 31, § 4.

[3] Parker *v.* May, 5 Cush. 336.

[4] Jefts *v.* York, 10 Cush. 394; 12 Cush. 196.

general charity.[1] But suits and proceedings may be instituted against deacons by a committee of the church.[2]

§ 3. It is natural to inquire here whether the church may not have been directly or indirectly incorporated in Massachusetts by itself or along with the deacons. The fact that, prior to 1700, no acts were passed incorporating any literary, benevolent, or religious institution whatever, excepting Harvard College; together with the fact that after the year 1780 incorporations for every conceivable institution *incidental* to the church were granted freely; have induced learned men to argue that the *church*, to which incorporated deacons and incorporated ministers and parishes were mere incidents, was itself necessarily a corporation, or *quasi* corporation, from the beginning. This claim, however, in behalf of the church, urged with skill and perseverance, has not been allowed by the court at any time during the last fifty years, as we have seen already.[3]

If we inquire whether the Legislature has made any approach towards incorporating churches, this is the answer: The earliest special act having that appearance that we have noticed was passed April 20, 1779, incorporating "Warwick church and congregation." It seems, however, to have been granted in order to sell "the ministry right of land." The proprietors of Salem Tabernacle, incor-

[1] Parker *v.* May, 5 Cush. 336.
[2] Weld *v.* May, 9 Cush. 181.
[3] Chaps. *ante*, iv. and v.

porated in 1781, to "value and assess" the pews "in concurrence with the church," complain that the clause including the church "is unusual," and they obtain leave to dispense with it in 1794.[1]

Again: Orange "church and congregation" obtained leave to incorporate themselves into "a society," in order to hold their ministerial fund. These will serve as illustrations of the special acts incorporating churches in any sense, in Massachusetts, prior to 1800.[2]

The absence of special acts incorporating churches distinctly, may be accounted for since the Revolution thus:

1. Churches of all denominations may have been deemed sufficiently protected by general statutes.

2. Applications for special acts of incorporation for churches could not be made without the discussion of creeds and confessions and usages before the General Court.

3. Had special acts been granted, incorporating churches with creeds and usages, without objection, the churches would have rendered themselves amenable to the General Court; and there might be com-

[1] St. 1781, ch. 13; 1794, ch. 11.

[2] St. 1784, ch. 20. For similar special acts, see Pamphlet, 1828, in reply to strictures on Hanover Street Trust Deed, Historical Society. The Old South Church has had its corporate name changed by Act of 1859, ch. 88, to Old South Society. *Per contra*, the Universalist Convention of 1863, tending towards a Presbyterian polity rather than a Congregational, advise churches to become incorporated, not societies. So of the Episcopalians, whose style prior to 1833 was "Convention of the Churches;" since, "Convention of the Church in this Commonwealth."

menced the inquest, the *quo warranto*, and other legal measures against churches so incorporated.

4. The patriots of 1780, who framed the Bill of Rights, were careful lawyers. When they refrained from incorporating churches, they had in their minds the terrors of English acts of uniformity, the Antinomian discussions of Colonial times, together with the painful incidents of the *quo warrantos* of 1665 and 1685.[1]

[1] The acts of uniformity are well described in Mr. Punchard's Hist. Cong. 2d ed. For the *Quo warrantos*, see Mr. Palfrey's History; see further, ch. 13, § 13. The indisposition to incorporate a church or church polity is increasing, rather than diminishing. See Senate Docs. 17 and 38, for 1844; also 89, for 1847. See Lord Brougham's Strictures on Mr. Hallam, for calling the Church of England "The first corporation in the realm." 1 British Constitution, 272, 1861. That it is rather a department of the English Government, as our army and navy, see New Englander, 1849, 256; 28 Examiner, 171. The General Assembly of the Presbyterian Church is no corporation or *quasi* corporation. Com *v.* Green, 4 Wharton, 531.

CHAPTER IX.

Religious Societies — Organization — Incorporation — Roman Catholics — Federal Street Society — Park Street Trust Deed — Taxes, how levied — Officers — By-Laws of Religious Societies, their Relief, their Extinction.

§ 1. THERE are few statutes and decisions relating to churches and deacons: in regard to parishes and religious societies, they are very numerous.

The early distinction between the territorial parish, including, after the English model, a definite tract of land, and the poll parish, made up of individuals, — between voluntary religious societies and incorporated, — may be traced in the cases cited below.[1] These distinctions, so momentous at one time, began to be effaced by the religious freedom act of 1811, and the numerous special charters of incorporation. That they are now abandoned, may be seen in the General Statutes, 1860, where the term "religious society" includes the parish in many sections.

§ 2. Such are now the facilities of organizing and incorporating a religious society, of any denomination, that ten or more of its members, being voters, by following the plain directions of the statute, may obtain all the advantages of organization and incorporation that the Commonwealth has to be-

[1] Fisher *v.* Whitman, 13 Pick. 350; Tobey *v.* Wareham, White *v.* Braintree, 13 Met.; Parker *v.* May, 5 Cush. 336.

stow.[1] Before any ceremony of organization and incorporation under the Statute, which dates back to the year 1824 at least, these parties were voluntary religious societies, and had important rights. They could perform religious worship; they could receive and hold property.[2]

Now, persons who own a church edifice, or other house of public worship, may incorporate themselves; the clerk taking care to leave with the town clerk a copy of the proceedings of the meeting for organization. They may become a "religious society," if they are going to build a meeting-house, by taking the same precautions. All the meeting-houses so built, and all the meeting-houses and church edifices in the Commonwealth, new or old, are protected from wilful and malicious injury, by a penalty of five hundred dollars or imprisonment.[3] And in general, that every avenue to doing good or getting good may be opened wide and large, the Legislature, since 1853, have allowed any seven persons to associate themselves in writing, under any name, for educational, charitable, and religious purposes, and become a corporation, capable of holding one hundred thousand dollars, real and personal property; taking care to record, in the registry of deeds, their corporate name, objects, articles of association.[4]

[1] Gen. Stat. ch. 30, § 4, 5. Appendix C.

[2] St. 1824, ch. 106; Christian Society *v.* Macomber, 3 Met. 235; Lawrence *v.* Fletcher, 8 Met. 154.

[3] Gen. St. ch. 30.

[4] Stat. 1853, ch. 389; Gen. St. ch. 32, § 1. Appendix C.

Truly a great change from the ancient law ecclesiastical in Massachusetts, when the General Court, following the English ecclesiastical law, announced that they intended that "the teaching *officer* of churches should be the minister to *all the people in that town* where such church is planted;" "that the General Court doth not nor will approve of any such companies of men, as shall join in any pretended way of church-fellowship, unless they shall acquaint three or four magistrates dwelling next, and the elders of the neighboring churches, where they intend to join, and have their approbation therein." As for meeting-houses, they must be erected "with consent of the freemen of the town, first orderly had and obtained, and license of the County Court; or, in defect of such license, by the special order of the General Court." The meeting-house not sanctioned in this way might be forfeited, "with the land whereon it stood, and the private ways leading thereto, to the use of the county, and disposed of by sale or demolishing."[1]

The General Court thus exercised, in early times, a supervision of the matter of religious societies and meeting-houses, not unlike that of a bishop in the English Church, who had the power of sanctioning or not sanctioning the building of churches; and refused to consecrate them, if built in places where, in his judgment, they were not needed, or interfered with churches already established.[2]

[1] Anc. Char. 100, 104.

[2] In 1669, the Selectmen of Boston voted for a third meeting-house (Old South); but the General Court deeming it unnecessary, the

§ 3. The prerogative of incorporating religious societies has resided in the General Court, and been exercised with sufficient liberality. The grace, favor, or dignity of incorporation, whatever it may be called, was not much sought for at first. In Boston, where the pew-holders were the religious society, we find a few incorporated as early as 1803, for convenience' sake. In the rural districts, parishes, the equivalents of religious societies, were *quasi* corporations, immortal enough, and convenient enough for all practical purposes. Prior to 1810, says Judge Story,[1] very few parishes or religious societies along the seaboard had special acts of incorporation. After that time, however, from causes already noticed, the granting of special acts occupied no small share of the time of the General Court. Orthodox Congregationalists have been very careful to obtain such special acts. Some societies have been twice and three times incorporated. Most of the Orthodox societies in Boston have been re-incorporated since the year 1830, in order to take advantage of

election of 1670 turned upon that question. And for thirteen years the first church refused to recognize the third. Wisner's Old South, 9.

To locate the meeting-house properly was no easy task in the olden times. One town in Massachusetts employed a surveyor for the purpose for months, who was charged, 1st, to find the centre of territory; 2d, the centre of population; 3d, the centre of wealth; and, 4th, the centre of those three centres. The fourth centre was not adopted in the end, however. Agreeably to sec. 2, canon 5, title 3, of Digest of Canons of Prot Epis. Church in the United States, the Standing Committee of the Diocese of Massachusetts, since 1861, give or withhold assent to the formation of new parishes.

[1] Convention, 1820.

the favorable provisions of the statutes.[1] All the religious societies in Andover, except the Old South and the Free Church, have been specially incorporated; the Methodist in 1832, the Baptist in 1834, and the Episcopal in 1837, and again in 1855, authorized to hold two thousand, three thousand, and twenty thousand dollars, respectively.[2] Overburdened at length with applications for charters for religious societies, the Legislature passed laws authorizing men to incorporate themselves, by the simple process that we have described, which answers the purpose so well, that few special acts, incorporating religious societies, have been granted since 1856.[3]

§ 4. The numerous special acts of incorporation in former years are a useful index of the legal doubts and ecclesiastical temper of the times. Prior to the religious freedom act of 1811, two significant clauses are found in the Baptist acts of incorpora-

[1] For Old South, see acts 1845, ch. 229, and 1859, ch. 88. That debts are not discharged by re-incorporation, see Epis. Ch. Soc. *v.* Epis. Ch. Dedham, 1 Pick. 371. The effect of re-incorporation is held, in New Jersey, to be reviving and perpetuating to an old society. Miller *v.* English, 1 Zabriskie, 321. As to merger by incorporation, St. Luke's *v.* Slack, 7 Cush. 230.

[2] In case of an ancient religious society, the Court have presumed an act of incorporation after thirty years. Attorney General *v.* Federal Street, 3 Gray. See also Cobb *v.* Kingman, 15 Mass. 197; Blandford *v.* Gibbs, 2 Cush. 39; 3 Met. 288; 4 Cush. 487.

[3] There are still special acts, authorizing the sale of ministerial lands, changing the name, legalizing proceedings, allowing lands, cut up by useless roads, to be enclosed (West Cambridge). For Religious Societies incorporated from 1780 to 1848, see Senate doc. 90, for 1836, and House doc. 32, for 1848. There are omissions in the early years, which may be easily corrected when a uniform edition of the laws is published.

tion; showing a person, first, how he may become a member of the religious society, and, next, how he may leave it, "in case he renounces Baptist principles." Special acts for Congregationalists often contain provisions allowing a member of a Congregational society to join the new society in the same town, within a year after reaching twenty-one, — a question that was not entirely free from doubt until the Stat. of 1824, ch. 106. There are also provisions at an early date, for making by-laws, and taxing pews according to a valuation.

Without critical examination, it may be said there was no lack of diligence, after 1811, in procuring general as well as special acts; thus, St. 1818, ch. 77, 184, St. 1823, ch. 106, made all the improvements in the territorial parish system of which it was capable. St. 1817, ch. 189, allowed proprietors of meeting-houses to regulate their affairs and tax their pews. The taxing of pews was not perfected, however, until St. 1845, ch. 213, and 1822, ch. 319.[1] The Senate documents, 4, 23, for 1829, and 25, for 1831, House documents 23, for 1830, and 97, for 1831, foreshadow changes hardly yet completed.[1]

Amid the anxiety and haste of various denominations to secure the protection of the Commonwealth by acts of incorporation, there is something dignified as well as startling in the independence of the Roman Catholic church. Without general laws for its protection, without special acts of incorporation, or an application for one, it has gone

[1] Newbury *v.* Dow, 3 Allen, 369, as to acceptance of St. 1845 by proprietors of meeting-houses erected prior to that time.

forward in the planting of its churches in all parts of Massachusetts, since the year 1790, retaining all its ecclesiastical property in the hands of the Roman Catholic bishop of the diocese.[1]

§ 5. Under the decisions of our courts, it is doubtful whether acts of special or general incorporation are of any use except for the convenience of holding property. Certainly no immortality of sound doctrine or church government is secured by such acts. It is questionable whether anything would save a meeting-house, especially in Boston, from any use to which the *bonâ fide* proprietors of pews might choose to put it. The Presbyterians of Long Lane, in Boston, endeavored, in 1735, by a deed of trust, to put their church under the fostering care and discipline of the Presbyterian Church of Scotland. Should they wake up now, they would find their meeting-house divested of Rouse's version of the Psalms, the Assembly's Catechism, and everything that distinguishes the Presbyterian Church.[2] In the room of all these, they would find now, incorporated by the special act of 1805, confirmed by the Statute of Limitations, and the decision of the Supreme Court in 1854, the Congregational Unitarian Society, late of Federal Street, now of Arlington Street.[3]

[1] For attempts, in 1855, to prevent Roman Catholic church lands from vesting in the bishop, see ch. 7, § 12.

[2] For the change of King's Chapel from Episcopal to Unitarian standards, see Dr. Greenwood's History. For changes and removals of the Second Church of Boston, over which Cotton Mather once presided, see 49 Examiner, 512.

[3] Attorney General *v.* Federal Street Meeting-house, 3 Gray, 1. In

§ 6. To avoid the uncertainties of the law, and secure the perpetuity of their doctrines and discipline, the founders of Park Street religious society, in 1809, adopted a trust deed, drawn with elaborate care, intending to secure the right of electing the minister to "the successive male members of the church forever," without respect to pew-holders. The same course was taken in 1822, by the Essex Street society; in 1824, by the Congregational society in South Boston; in 1826, by the Hanover Street, now Bowdoin Street, society; in 1828, by the Salem and Pine Street societies, and by several others.[1]

On trial, these elaborate trust deeds, in imitation of the English dissenting chapel deeds of trust, have not been found to suit ministers or people in Massachusetts; and they are either modified or

this case, the words of the trust deed, "according to the tenures and after the same manner as the church of Scotland hold and enjoy land," are construed by the Court not to refer to the religious doctrines of the associates, but to the tenure by which the land is held. In Pennsylvania, the extent of the foreign supervisory jurisdiction in the Presbyterian Church is discussed, 1851, Skilton *v.* Webster, Bright, 235; the extent of domestic jurisdiction, in Com *v.* Green, 4 Wharton, 531; York *v.* Johnston, 1 W. & S. 9; Means *v.* Presbyterian Church, 3 W. & S. 313, 1842. English trust deeds are not inflexible: Lang *v.* Purvis, 1860. 5 Times Rep. 809, allows a Presbyterian church to exchange home for colonial supervision. Attorney General *v.* Gould, 3 Times Rep. 495, allows a Particular Baptist church to substitute open communion for close communion.

[1] The Pine Street deed may be seen in Suffolk Registry, lib. 328, fol. 5; the revocation, lib. 364, fol. 26. A vigorous legal and theological defence of these conveyances may be found in a pamphlet by Dr. Wisner, 1828, in reply to attacks on them, in 1827. Historical Society.

abandoned in a few years. Thus, Park Street, 1835, obtains an act of incorporation, with the privilege of taxing the pews, pursuant to the act of 1817;[1] and Essex Street society, 1837, follows her example. In 1831, by unanimous vote of the church and society, the Pine Street trust deed was abandoned, and the trustees conveyed to "the Pine Street Religious Society," incorporated the same year. This society wishing to sell their property in 1858, and the question arising, whether the trust could be thus discharged by vote, they applied to the Supreme Judicial Court, and obtained the relief which they asked, from the apparently perpetual trust of 1828.[2]

[1] St. 1835, ch. 81; St. 1817, ch. 189.

[2] St. 1831, ch. 37; also 1858, ch. 153. See Tudor on Charitable Trusts, ch. 8, § 3, for Dissenting Trust Deeds in England. Pine Street Religious Society *v.* Weld, March Term, 1858, Gray's Rep. In New York, religious societies cannot sell their real estate without leave of Court, Manning *v.* Moscow, 27 Barbour, 52.

Any church or religious society, it is said, may safely become Congregational, in New York, by observing the following cautions: —

1. Do all the work of disposing of the property through the present organization, existing unimpaired and unaltered. *a.* Let the society, in regular meeting, pass a vote, instructing the trustees to sell the property. *b.* Let the trustees, in like manner, pass a vote to sell. *c.* Get an order of the Supreme Court, authorizing and directing the sale according to these votes. *d.* Then let the trustees of the present organization sell and convey the property to the new Congregational society, which will have been organized in the meantime. 2. The best time to organize the Congregational society, if not already done, will be *after* the order of sale has been obtained from the Court. Any members of the old society can join in calling the meeting and forming the new society. 3. The Congregational society should be formed and fully organized, with trustees and all officers, and registered according to the forms of the statute, before it undertakes to buy the property of the old society.

Whatever value there may be in doctrines or discipline, no trust deed or legislation has yet been found in Massachusetts, to preserve them immovably in one spot forever. We carry forward our valued religious and benevolent enterprises hopefully and cheerfully in our day, under general statutes or frail acts of incorporation, liable to be revoked at the pleasure of the Legislature.

§ 7. We next inquire what a religious society may do.

An organized religious society, with or without incorporation, may assess its members for the support of public worship and other incidents thereto, such as the improvement of burial-grounds and music.[1] Such assessments may be laid on individuals, "as town taxes are by law assessed," or on the valuation of pews, or by both methods; and the assessment properly laid upon members of a religious society may be enforced by suit, or by sale of the pew after reasonable notice.[2] There

4. In all such cases, a majority vote is sufficient, when the proceedings are all regular. 5. Then call an ecclesiastical council of Congregational churches, not less than three, and better if more, to recognize the church, as in fellowship with other Congregational churches. 6. It is better to have, if attainable, but not indispensable if unkindly withheld, a vote of the present church authority, dismissing and recommending, in good and regular standing, such members as desire to unite in forming a Congregational church.

[1] Assessments for sacred music were allowed by St. 1822, ch. 67.

[2] Bangs *v.* Snow, 1 Mass. 181; Gen. St. ch. 30, § 20. Mussey *v.* Bulfinch Street Church, 1 Cush. 148. Ware *v.* Sherburne, 8 Cush. 267. In Virginia, by act of 1830, no religious society shall tax itself to build, repair, or support the minister, Repertory, 1848, 200. The various modes of supporting the gospel are discussed, 15 Christian Re-

may be cognate objects for which a religious society may not assess its members, but for which it may receive and hold gifts, devises, and bequests; and among such objects are schools.[1]

Where the assessment is laid upon the members of a religious society "in the same manner and proportion as town taxes are by law assessed," the following rules have been adopted by the courts.

1st. The taxes of two years cannot be granted and assessed in one year; but they are to be granted and assessed annually;[2] and the sworn parish assessors are not at liberty to use the valuation list of the town assessors, but must make one of their own.[3]

2d. The tax granted in one parochial year and assessed the next is not binding on the parishioner, who ceases to be a member of the parish before the assessment.[4]

3d. Following still the analogy of town assessments, the assessment of the parish or religious society, for the parochial year, does not bind one who ceases to be a member of the parish before the first day of May of that year.[5]

view, 420; Free Pews, Church Rev. vols. viii. ix. xiii. A writer in the Cong. Quarterly, 1860, 329, proposes to dispense with the society, and throw the support upon the church alone.

[1] Sutton *v.* Cole, 3 Pick. 232; White *v.* Braintree, 13 Met. 506.

[2] Nason *v.* Whitney, 1 Pick. 140.

[3] Gen. Stat. 30, § 21; Granger *v.* Parsons, 2 Pick. 392.

[4] Inglee *v.* Bosworth, 5 Pick. 501; Dow *v.* Sudbury, 5 Met. 73.

[5] Ware *v.* Sherburne, 8 Cush. 267; Whittemore *v.* Smith, 17 Mass. 349.

§ 8. The officers of a religious society are a moderator, a sworn clerk, two or more sworn assessors, a sworn treasurer, and a sworn collector, "and such others as they think necessary."[1] There are no decisions affecting these parish officers, except the treasurer; who cannot, without an express vote of authority, give a promissory note, whether the society is incorporated or unincorporated.[2]

In the case of an Episcopal religious society, it has been held, that a meeting of the proprietors is properly called by a warrant signed by the chairman and clerk. (The like rulings would probably be made in similar cases, affecting other denominations.) That illegal votes do not vitiate the election of officers, unless they are sufficient to affect the result. Where there are no by-laws to the contrary, the vestry, without a warden, may transact business. Where there are no by-laws to the contrary, a *vote* to choose officers by *ballot*, at a number of previous annual meetings, does not prevent an election by hand vote; though confusion may be incident to the method of electing officers by hand vote. Also that a vote to increase the number of vestrymen cannot bind those already in office until the new officers are elected.[3]

§ 9. How to organize a religious society; how to amend one imperfectly organized; who are intended to be organized; at what point of time they are or-

[1] Gen. Stat. ch. 30, § 15, and St. 1865, ch. 100, allow the moderator to swear the clerk, and the clerk swears the others.

[2] Packard *v.* Universalist Society, 10 Met. 427.

[3] Wardens *v.* Pope, 8 Gray, 140. Since 1858, the wardens and vestry

ganized; and what can be done by a religious society before and after organization, — were questions much discussed by the courts heretofore; but the statutes now are so full as to require merely a reference to the decided cases.[1] The General Statues, ch. 30, provide specific directions as to organization; and authorize parishes and religious societies, incorporated and unincorporated, to make by-laws and prescribe as to terms of membership. It would seem that in proceedings subsequent to organization, where the society has no by-laws, and the statute is specific on the subject, the statute is to be followed strictly.[2] In their by-laws, religious societies may make such terms of membership, and forfeiture of membership, as they choose, unless restricted by their articles of association, the act of incorporation, or the public laws.[3]

of Protestant Episcopal churches, in the absence of by-laws, discharge the duties of moderator, standing committee, assessors, and collectors. Gen. St. ch. 30, § 19. Appendix C.

Since 1847, trustees of Methodist and African Methodist Episcopal Churches are empowered to discharge the duties of wardens, vestry, and deacons. Gen. St. ch. 30, § 43.

[1] See Sutton *v.* Cole, 3 Pick. 232. Fisher *v.* Whitman, 13 Pick. 350. Proprietors of St. Luke's *v.* Slack, 7 Cush. 230. Wood *v.* Cushing, 6 Met. 448. Ladd *v.* Clements, 4 Cush. 476.

[2] Wiggin *v.* Elders, 8 Met. 301. Gorton *v.* Hadsall, 9 Cush. 508. Various acts legalizing the organization and other doings of religious societies, may be found in the Massachusetts Special Acts since 1850.

The reader, who is curious in these matters, will find the rudiments of the law of 1860, in regard to organizing parishes and religious societies, contained in Provincial Statutes from 1694 to 1763, in regard to organizing parishes, precincts, districts, and towns, cited in chapter first of this work, § 3.

[3] Taylor *v.* Edson, 4 Cush. 522. For good by-laws, see Dexter on Congregationalism, 211.

§ 10. The mode of obtaining relief for religious societies and parishes in court is not peculiar: they have a longer time allowed them for appearance in court, to answers suits, than individuals. They are so far public corporations, that the court will issue a mandamus compelling a party to restore their records to the custody of the proper officer.[1] They are so far public corporations, also, that a member cannot, under St. of 1852, ch. 312, § 42, obtain a writ of *quo warranto* in case of an anticipated illegal sale of property, or an illegal tax is levied.[2]

The parish, we have already seen, has no right by suit, or through the attorney general, to inquire what disposition the church or the deacons have made of church property; such property being held in trust for the benefit of the church.[3] Nor can the public, through the attorney general, inquire, on grounds of public charity, what disposition the parish or religious society have made of its own funds.[4]

It may further serve to qualify impressions that pew-holders entertain in regard to their combined powers, to know that the court has intimated in several cases, that there may be rights of the parish and religious society, distinct from those of the

[1] Proprietors of St. Luke's *v.* Slack, 7 Cush. 230. Gen. St. ch. 123, § 22.

[2] Gen. Stats. ch. 145, § 16; Goddard *v.* Smithett, 3 Gray, 116.

[3] Parker *v.* May, 5 Cush. 336. Ch. 5, § 2.

[4] Attorney General *v.* Federalist, 3 Gray, 1 Att. Gen. *v.* Merrimack Co. 4 Gray, 586. See ch. 13, § 6.

pew-owners, dependent upon the organization and construction of the society.[1]

§ 11. Having followed a religious society thus far through so many stages of its life, we become curious about its dissolution. We shall find that once organized, whether incorporated or not, a religious society is not easily dissolved. A voluntary society, which had met for organization merely, two years previous, which had never met for public worship, or had a minister, whose records had been burned up, and its members mostly scattered or withdrawn, was held, nevertheless, not to be dissolved.[2] On the other hand, "The six principle Baptist church" whose members were reduced to two, and they, after notice, voted no longer to maintain the appearance of a visible church, declaring it dissolved and extinct, and entering the same on their records, it was held by the court to be dissolved, and no longer visible.[3] In case of the dissolution of a religious society or a church, the records are to be deposited with the town clerk.[4] Other incidents attending the life and dissolution of a religious society, may be found in the next chapter.[5]

[1] Proprietors of St. Luke's *v.* Slack, 7 Cush. 230; Wood *v.* Cushing, 6 Met. 448; Howard *v.* Hayward, 10 Met. 408, and Federal Street case. Pew-holders, not *bonâ fide*, but purchasing to effect an object, are held in light esteem by the Hollis Street Council, 1840.

[2] Oakes *v.* Hill, 14 Pick. 442.

[3] Easterbrooks *v.* Tillinghast, 5 Gray, 17, 1855.

[4] Gen. Stat. ch. 29, § 12. The church or religious society, before the act of dissolution, should take care to divest itself of all property.

[5] Also in ch. 31, §§ 8 and 9. For the extinction of the French Protestant Society in 1748, by sale of its lands in School Street, Boston, see notice of Rev. Andrew Le Mercier, in New England Genea-

logical Reg. vol. xiii. p. 320. For a protest against the dissolution of a church by a mutual council, with the consent of a majority of its members, see Result of Howard Street Salem Council, 1849, second edition. The approbation of the Essex Conference to such a dissolution is held to add no force to the proceedings of the majority of the church. Per Contra, see a "Review of the Result," published in 1850. Dexter on Congregationalism, 230.

CHAPTER X.

Meeting-houses — Owned by the Parish — Title in whom it vests — Town Houses — Repairing and Rebuilding — Removing — Trespass on Meeting-house and grounds.

§ 1. The question, who owns the meeting-house, like other questions of property, has been discussed in our courts. In England, the fee of the church and glebe is in the parson. The fee of the burying-ground only is in the parish. In general, it may be said, that the meeting-house in Massachusetts is owned by the parish or religious society; whoever holds the fee, holds it for the use of the parish or religious society. The control of the meeting-house, in general, follows the ownership.[1]

But this question of ownership and control has qualifications in the law, divisions, and distinctions, like the great doctrines preached in the pulpits. In the days of church and state, this was a field for the nicest legal distinctions. If the meeting-house was erected when town and parish were one, no such entity having yet been carved out of the town as the corporation called the parish, even then it was of no little legal consequence to whom the meeting-house belonged. Just as soon as the parish was created out of the ribs of the town, forthwith the

[1] Gay *v.* Baker, 17 Mass. 435. Attorney General *v.* Merrimack Mf. Co. 14 Gray, 586.

manly town lost the meeting-house; and it went over, with all its adjuncts (*eo instanti*), to the more feminine spiritual corporation, the parish. In plain English, the meeting-house from the first, with its lands and property, belonged to the town in its parochial, not in its civil character.[1]

But these general principles, applicable to territorial parishes, are now qualified so often by acts of incorporation transferring the real and personal property to certain parties, by conveyances in trust, and by other legal acts, as to require investigation in almost every case, to ascertain where the legal title of the meeting-house resides. Thus, in one instance, the legal title was held to be, not in the religious society, but in the incorporated proprietors, who were tenants in common; although the religious society had taken charge of the property for some years.[2] In case, however, the religious society is organized but not incorporated, a deed to the society does not thereby constitute the members tenants in common.[3] Where two trustees hold lands for an unincorporated

[1] Eager *v.* Marlborough, 10 Mass. 430. Austin *v.* Thomas, 14 Mass. 333. Ludlow *v.* Sikes, 19 Pick. 323. Tobey *v.* Wareham, 13 Met. 440. Newmarket *v.* Smart, New Hampshire, 1865. Town and parish business was transacted in the same town meeting almost uniformly. So important a parish as the First in Charlestown had no separate organization for town and parish business until 1786. Probably New Braintree, in 1847, was the very last town in the Commonwealth to adopt a parochial organization, distinct from the town. St. 1786, ch. 10, §§ 4–5, embodies the law of that time. Appendix A.

[2] Howard *v.* Hayward, 10 Met. 408; Bridgewater *v.* Waring, 24 Pick. 309.

[3] Hamblette *v.* Bennett, 6 Allen, 140.

religious society, and one of them abandons or mismanages the trust, his associate does not thereby become the sole legal trustee.[1] So in case of a surviving trustee by deed, the title remains in him: it is not transferred, without a conveyance, to new trustees elected by the religious society. [2] Where a meeting-house was erected by the contribution of two religious societies, on land belonging to one of them, it was held to belong to the society owning the land.[3]

§ 2. If several territorial parishes were made out of one town, the meeting-house, and the land on which it stood, went to the oldest or first parish in the town; not to the town proper.[4] It has been decided, that the meeting-house is the property of the parish, so exclusively that the town cannot complain if the parish shut them out of the use of the meeting-house for municipal purposes, such as town meetings, celebrating the Fourth of July, holding courts and conventions, after the town had been using it nearly sixty years, as in the case of Medford.[5] In the case of Milford, the Court say the town has no right to complain, if the meeting-house is torn down by the parish, and the town is left destitute, after making repairs, and using it for municipal purposes, for seventy years.[6] The vitality of the parish in this

[1] Webster *v.* Vandeventer, 6 Gray, 428.

[2] Peabody *v.* Eastern Methodist Society, as to trustees, 5 Allen, 540. As to merger of title, see Earl *v.* Washburn, 7 Allen, 95; Cammeyer *v.* Un. Germ. Luth. Chhs., 2 Sandford's Ch. 186, N. Y. 1844.

[3] Manning *v.* Gloucester, 6 Pick. 6.

[4] Statute 1786, ch. 10, § 5. The General Court in some instances made an equal division of property. See Wilbraham, 1782.

[5] Medford *v.* Pratt, 1826, 4 Pick. 222.

[6] Milford *v.* Godfrey, 1822, 1 Pick. 97. By deed, however, the use

case is a little remarkable: it was not lost or merged in the town by a nonuser of five and thirty years.[1]

It would be unprofitable to inquire how far the learned Court followed, in these decisions, analogies drawn from the English parochial law, or the modern law of husband and wife, with its claims for divorce and separate maintenance. It is enough for us to know that the law laid down in the Milford and Medford cases was intended to be an application of theories, that ran through the church and state policy of the Commonwealth. In 1820, it had turned the church out of the meeting-house by the Dedham and kindred decisions; and now we find it, in five short years, turning the town out of the meeting-house. But there are compensations in all things: the Dedham case, with its hardships, gave new life and energy to the Orthodox Congregationalists. To the Medford and Milford decisions, we owe many commodious town-halls which adorn the Common-

may be secured to the town, so as to follow the meeting-house, when moved from its original site. Goff *v.* Rehoboth, 12 Met. 26.

[1] As to the ownership of a bell procured by subscribers, which hung for ten years in the belfry, by consenting vote of the parish, the Court decide that it belongs to the subscribers. Springfield *v.* Root, 18 Pick. 318. The town-clock presented to the public is town property, and may be safely repaired by the selectmen. Willard *v.* Newburyport, 12 Pick. 227. The entire nicety of town and parish law is seen in 1826, in Woodbury *v.* Hamilton, 6 Pick. 101, where the chief justice intimates that a distinction may be drawn between the fees of the sexton for ringing the bell for town purposes and for parish purposes. The control of the bell, by English ecclesiastical law, belongs to the minister. Redhead *v.* Wait, 6 Times Rep. 580. Horsesheds are more sure to develop church and state law in Massachusetts than bells, as we shall see in ch. 12.

wealth, springing into life from such stern judicial foundations.[1]

§ 3. While the venerable towns took these decisions in good part, hardly inquiring whether the Court were reformers or not, parishes and religious societies have not slumbered in the quiet possession of ancient meeting-houses. All obstacles to the building of new ones that could be removed by legislation have been removed. All possible changes in a meeting-house are anticipated by the exuberant statutes of later years, which allow new meeting-houses to be built; old ones to be removed, sold, altered, repaired, rebuilt, or abandoned, at the pleasure of the parish or the proprietors; care being taken to obtain in advance the consent of the parishioners or co-proprietors, if it may be had; always offering pew-owners an indemnity in case the meeting-house is not altogether "ruinous and unfit for public worship."[2] It will be noticed that subordination of parishioners and pew-owners to the general rights

[1] Since 1830, quite a group of decisions has illustrated the law of town-halls and town-houses.

1st. It has been held, that, under a vote "to build a town-house or provide one," the materials of an old meeting-house may be used in building the town-house. Hadsell *v.* Hancock, 3 Gray, 526.

2d. In French *v.* Quincy, 3 Allen, 9, the meaning of the words, "place for a town-house," are discussed; also, the uses of town-houses.

3d. The authority of towns to erect town-houses, market-houses, under ancient statutes and usages, which committed to the town the management of their "prudential affairs," is examined at large in Spaulding *v.* Lowell, 23 Pick. 71, 1839, and the cases there cited. See also, Haven *v.* Lowell, 5 Met. 35; George *v.* Mendon, 6 Met. 510.

[2] Gen. Stat. ch. 30, § 35–37. The danger of not following plans approved by the bishop, arch-deacon, and vice chancellor, in the

of the parish, is a characteristic of these statutes; which give no indemnity whatever to pew-owners or to proprietors, where the meeting-house is taken down, on account of its permanent unfitness for public worship.[1] Otherwise, if the meeting-house is temporarily unfit, and does not require entire demolition.[2] In one instance, the Court have sanctioned the abandoning of a meeting-house, fit for public worship, without indemnity to a pew-owner. The parish, in this case, having decided to leave their meeting-house, and build in a new part of the town, a pew-owner, considering himself aggrieved, sued the parish, and the Court held it was *damnum absque injuria;* for it did not appear that the parish acted wantonly, or with any disposition to injure the pew-owner. His fellow-worshippers, said the Court, made no promise, express or implied, that they would always keep his company, and occupy the old meeting-house; and each pew-holder had the same right

alteration of an English church, is illustrated in the case of Cardinall *v.* Molyneux, 4 Times Rep. 605. The danger of preaching in unlicensed chapels, Jones *v.* Jelf, 8 Times Rep. 400; Barnes *v.* Shore, 4 Eccl. Cases, 593; of preaching in a parish against the remonstrance of the incumbent, Jones *v.* Jelf; against the bishop's remonstrance, Bp. Down *v.* Miller, 5 Times Rep. 30.

[1] Daniel *v.* Wood, 1 Pick. 102; Gen. St. ch. 30, § 37.

[2] Howard *v.* First Parish N. Bridgewater, 7 Pick. 138; Gorton *v.* Hadsell, 9 Cush. 508. The law of subordination to the general interests has been applied by the Court to the grounds attached to the meeting-house. One of the proprietors of a meeting-house in Bridgewater was prohibited from using such ground for a caravan, Bridgewater *v.* Waring, 24 Pick. 304. The subordination of a ladies' benevolent society, who had finished the basement at their own expense, to the committee of the unincorporated religious society, worshipping upstairs, is illustrated in Hamblette *v.* Bennette, 6 Allen, 140.

as himself to sue the parish.[1] It hardly needs to be added, that, in the building of new meeting-houses and the repairing of old ones, the religious society, the committee, and the contractors are liable to whatever misapprehensions are incident to other verbal and written contracts; together with some peculiar to the subject-matter.[2]

§ 4. We have laws putting a certain sanctity on the meeting-house and its precincts, the burial-ground, and the vestry-room, as in England. Our courts punish according to the aggravation of the offence, and their own sense of propriety, within the limits of the statute.[3] In the early statutes of the Colony, we trace the effects of English ecclesi-

[1] Fassett *v.* Boylston, 19 Pick. 361, 1837. Eastman *v.* Wright, 6 Pick. 316, 1828, illustrates the difficulty of suits at law between pew-holders. For leave to sell the meeting-house of the Meth. Epis. Ch., Ipswich, and distribute the proceeds, after paying debts, among the pew-holders, according to the valuation, see House Doc. 60, 1862. As to the control of meeting-houses by the Meth. Epis. Conference, see Guild *v.* Richards, 16 Gray, 1860.

[2] a. Builders having to do with the building committee of a parish divided about building the meeting-house "on the hill or on the flat," will consult to advantage Damon *v.* Granby, 2 Pick. 345, as to the power of the committee; who are allowed to act by their majority.

b. From Simonds *v.* Heard, 23 Pick. 120, it may be inferred that the builders, under some circumstances, can hold the committee liable in the first instance; next the town or parish.

c. How slight the acts of ratification may be, on the part of a corporation or *quasi* corporation (without a vote), may be seen in Hayward *v.* Pilgrim Society, 21 Pick. 275, where a vote to *accept the report* of a committee was held a ratification of the doings of the committee.

[3] Gen. St. ch. 161, § 67. As to disturbing religious worship, camp-meetings, and funerals, see Gen. St. ch. 165, § 20 to 25; Commonwealth *v.* Symonds, 2 Mass. 163; Commonwealth *v.* Porter, 1 Gray, 476.

astical laws against "brawling, smiting, quarrelling, and chiding by minister or people," in these sacred places. We concur naturally with English judges, who lay it down as law, "that no rectitude of intention, no accuracy of judgment, no provocation even, can excuse a man for brawling in church or vestry." There is enough of the Englishman still left in any Massachusetts man to be willing, for example, to see "the hat pulled off the head of the man who obstinately refuses to take it off in church," or the unruly urchin "whipped on the spot for playing therein."[1]

[1] Brawling, Waddilove's Digest; Burns' Ecclesiastical Law; King *v.* Ropier, 3 Times Rep. 159; Freeland *v.* Neal, 6 Eccl. Cases, 252; Law Mag. and Rev. viii. 342. As to Ventilation, see Cong. Quarterly, July and Oct. 1859; Repertory, 1853, 121. As to Architecture of Meeting-houses, see Cong. Quar. Oct. 1859, Jan. 1862; Repertory, 1855, 625.

CHAPTER XI.

Pews — At Common Law — Qualified Ownership — Exempt from Attachment — Control of Pews by Religious Society — Taxing Pews — Exclusive Rights of Pew-Owners.

§ 1. The English common law of pews was very simple and absolute. As for personal property in seats, the law knows no such thing. It is a wild conceit, "that there can be such use made of pews as of villas and other common property." "They belong to the parish, for the use of the inhabitants of the parish, who have a right to use them without paying for them;" and they cannot be sold or let without act of Parliament.[1] The bishop, as head of the diocese, had a right, by prescription, to a seat in the chancel; and so, by prescription, some persons of great quality among the parishioners had seats in the nave, because they had helped build the nave; others had seats by "faculty," that is, by assignment of the church-wardens, with the rector's assent, so long only, however, as they remained in the parish.[2] The prescription must be long to entitle a party to bring a suit in the English ecclesiastical courts for "Perturbation of seats;" and the repairs that would help to prove a man owner of a pew were not slight repairs, "such as putting in new cushions,

[1] Haggard, 1. 317.

[2] Burns' Eccl. Law, 1. 358.

linings, and stools," say the English judges. But usage, and the practice of assigning certain seats to the inhabitants of certain mansion houses, together with acts of Parliament, have modified the law of England in this regard.[1]

§ 2. In Massachusetts, at first, seats were annually allotted, according to the rank and quality of the parishioners, after the venerable English style of giving them out by "faculty." Afterwards, they were held by the law as real estate in the country, and personal estate in the city of Boston. Now, throughout the Commonwealth, pews are all personal property.[2] The courts say, however, that the owner has no such absolute right as he has in his farm, extending from the centre of the earth to the zenith; but a qualified right, or easement, subject to the more general right of the religious society, or the parish, or whoever may be the absolute owner of the meeting-house.[3] The subordination of the pew-owner in a territorial parish to the general rights of the parish, in regard to electing the minister, has been examined.[4]

The mixed nature of pew property appears in spite of statutes of 1796 and 1799, making pews real

[1] The English law as to pews seems to have changed but little in some houses of worship. For an exposition of the rights of parishioners in 1863, in pews, aisles, galleries, faculty, and allocation, see St. Colomb., 8 Law Times Rep. 861. A return to free seats is urged in the Church Rev. 8, 9, 13. As to monopoly of proxies of pew-holders, see Trinity Church, Boston, 1845.

[2] St. 1855, ch. 122; Gen. St. ch. 30, § 38. Appendix C.

[3] Gay *v.* Baker, 17 Mass. 435.

[4] Wood *v.* Cushing, 6 Met. 448.

estate out of Boston, and personal in the city. In discussing the title to Governor Hancock's pew, so late as 1840, the terms warranty, quiet enjoyment, adverse possession, are freely used.[1]

Such is the legal tie between the pulpit and the pews, that a pulpit cannot be levied on by the sheriff and removed apart from the pews.[2]

§ 3. Pews have a dignity of their own, and are ranked among the necessaries of life. Along with the meeting-house and its furniture, the pew is exempt from the property tax due to the state; so indispensable is a pew occupied by a debtor or his family deemed, that the law protects it from attachment and sale on execution, along with the poor man's Bible, wearing apparel, the implements of his trade, his cooking-stove, and his cow.[3]

The rights of pew-owners have been touched upon in the ninth and tenth chapters in connection with religious societies and meeting-houses. Special acts of incorporation were granted after the Revotion, allowing pews to be taxed on a valuation, for

[1] Proprietors of Brattle St. *v.* Bullard, 2 Met. 363. See also Quincy *v.* Spear, 15 Pick. 146.

[2] Revere *v.* Gannett, 1 Pick. 169.

[3] Gen. St. ch. 11, § 5; ch. 133, § 32; St. 1865, ch. 206. The sale of a pew by the treasurer for non-payment of taxes due the proprietors of a meeting-house, erected before St. 1845, ch. 213, examined; the preliminaries to a valid assessment under St. 1852, ch. 319, described; Gen. St. ch. 30, § 32, 33; Newbury *v.* Dow, 3 Allen, 369.

The proper construction of Sts. 1795, ch. 53, 1822, ch. 93, and 1831, ch. 59, in regard to recording deeds, mortgages, attachments, and executions on surplus pews, examined in Sargent *v.* Pierce, 2 Met. 80. Since 1852, pews are personal property, and governed by the laws of personalty in these respects.

the support of public worship. The proprietors of Salem Tabernacle, by St. 1781, ch. 13, are allowed to let and finally sell pews, in case the taxes upon them are not paid. Brookline First Parish, St. 1834, ch. 140, is one of the best considered of the acts of incorporation, the interval being filled by a large number of special acts, with minute directions, intended to secure a fair valuation of the pews. General provisions to accomplish the same purpose may be found in Sts. 1817, ch. 189, allowing all proprietors of meeting-houses to regulate their affairs and tax their pews; but the taxing of pews was not perfected until Sts. 1845, ch. 213, and 1852, ch. 319, were passed, which since have been merged in the Gen. Sts. of 1860, ch. 30.[1]

The more exclusive rights of pew-owners are sometimes discussed in connection with the right of the parish to use the meeting-house for purposes not strictly religious. How absolutely, how ungraciously, a pew-owner may exercise his rights, can be learned from a judicial report embalming a curious specimen of manners which we are not obliged to imitate. The owner of a pew, not wishing to have it used on the Fourth of July, screwed cleats on the inside of the door, also across the top of the pew; then floored over the top with boards, which boards he painted, and put up a notice forbidding any person to meddle. The committee of arrangements took down these structures: the owner sued them, and

[1] The leading cases are Mussey *v.* Bulfinch St. 1 Cush. 148. Newbury *v.* Dow, 3 Allen, 369.

recovered damages for trespass. Chief Justice Shaw, in 1842, giving the decision in this extreme case (which turned on the peculiar by-laws and constitution of this religious society), in favor of the pew-owner, remarked, that it did not settle the question of the right, in *ordinary* cases, to grant the use of meeting-houses to the exclusion of pew-owners; and the Court avoided giving a decision on that point, feeling, as the venerable chief justice happily expresses it, "that it is more for the harmony and well-being of society, that the practice should stand on considerations of urbanity and courtesy, than to discuss the question of strict law." [1]

[1] Jackson *v.* Rounseville, 5 Met. 127. In other States, decisions of Massachusetts, in regard to pews, are quoted with approbation. See Voorhees *v.* Presbyterian Church of Amsterdam, 17 Barbour, N. Y. The subordination of trustees to the session, in case of conflict as to the use of a Presbyterian church, is insisted upon, Repertory, 1863, 494, and Presb. Ch. *v.* Andruss, 1 Zabriskie, 328, 1848.

CHAPTER XII.

The Precincts of the Meeting-house — Town and Parish Conflicts, as to Training-fields, Commons, and Horse-sheds — Shrewsbury, Ludlow, Medford, Reading, Pepperell — The Burial-ground — Care of it, taken by Shrewsbury, by Andover. — Burial-rights.

§ 1. To understand this chapter, it is desirable to have a description of the formation of towns more full and complete than we have attempted heretofore. It may be said with truth, that in the towns of Massachusetts, — equivalent in some respects to the parishes into which all England was divided long before the Reformation, — we shall find the beginning, middle, and end of our ecclesiastical law. For an account of the formation of a Massachusetts town, we avail ourselves of materials furnished by an actual case in court, in which Chief Justice Shaw gave an opinion in 1833. Shrewsbury will answer for many towns in the Commonwealth, settled before the Revolution.[1]

On the petition of John Bingham and thirty others, the General Court, in the year 1717, appoint a committee with power to grant and lay out the whole of the lands of the township to such persons "as the committee, in their wisdom, think most likely to advance the settlement of the place, provided the committee, within three years, have there

[1] Shrewsbury *v.* Smith, 14 Pick. 297.

at least forty families, with an Orthodox minister." Also provided a lot as large as may be convenient, in their judgment, be laid out to the "first settled minister;" also a lot "for the ministry, and another for the use of schools."[1] With modifications, this was the provident, careful method of founding towns very early adopted.[2]

In less than three years, the proprietors of Shrewsbury vote to build a meeting-house, and that "the place for it be on Rocky Plain, near the pines, and if that could not be obtained on reasonable terms, then that it be set on Meeting-house Hill." The committee of five, to manage about the meeting-house, procured from Wm. Taylor, "fifteen acres on Rocky Plain," for which the proprietors gave him,

[1] In 1741, in the case of Lanesboro', greater exactness was used. On the application of seventy-six persons, the General Court, to secure fairness all around, and prevent speculation, divided the township into seventy-nine shares, always reserving, however, one for the first settled minister, one for the ministry, and one for schools. Humphrey *v.* Whitney, 3 Pick. 137; Lanesboro' *v.* Curtis, 22 Pick. 320.

[2] In the early settlement of the country, many towns were not formally incorporated, but have been recognized since as towns. Sometimes the naming was a virtual incorporation. See Commonwealth *v.* Roxbury, 9 Gray. Also Statistical Association, vol. 1.

At the first, the boundaries of towns were very large. Charlestown included Malden, Woburn, Stoneham, Burlington, Somerville, parts of Cambridge, West Cambridge, and Reading. Dorchester, says Mr. Savage, extended to Plymouth line; but later the bounds were restricted to eight miles from the meeting-house.

To the Committee of the General Court, we owe the size of farms and direction of roads in Massachusetts. See Jackson's Newton, Frothingham's Charlestown.

For the area of towns in 1830, '40, '50, see Senate Doc. 51, 1854. In 1838, there remained eight unincorporated gores or districts. Senate Doc. 12, 1838.

by vote, "five acres and twenty-four rods" elsewhere. This characteristic exchange they were entitled to make by the ordinance of 1636, which authorized "the freemen of every town, or the major part, to dispose of their lands and woods, and to grant lots." All that was required to make such conveyance was a vote: no deed, seal, or consideration were necessary.[1] On these fifteen acres, called the meeting-house lot, which was always "open, unfenced, intersected by ways leading to the burial-ground, and two highways," Shrewsbury meeting-house stood until 1766, when it was voted to rebuild it, and "look up the bounds of the meeting-house lot to see how much it was proper to sell." While Shrewsbury town and parish were all one, the town could make the appropriation of such surplus land from parish to municipal purposes. The appropriation, however, once fairly made to parochial purposes is in the nature of a grant, which cannot be revoked when town and parish become separate.[2]

If the old towns had been less in the habit of "looking up the bounds of the meeting-house lot to see what was proper to sell," the allowance of public grounds in the heart of Massachusetts towns would be more ample in our day. As it is, we owe to the "meeting-house lot" nearly all we have of common, green, public square, training-field, and muster-field, in the various towns of the Commonwealth. According to the custom of the country,

[1] Batchelder *v.* Wakefield, 8 Cush. 247.

[2] Lakin *v.* Ames, 10 Cush. 189. Boothbay *v.* Wylie, 43 Maine, 387.

the church in Shrewsbury was organized before the town; the original church members coming chiefly from Marlboro'. The township was organized as a town in 1727; and, in 1743, a new parish was organized in Boylston, a part of the territory of Shrewsbury.[1]

The creation of this new parish made new adjustments necessary. The rest of the old town of Shrewsbury became by statute the first parish of Shrewsbury, which took the parochial property.[2] We have seen already how some of these new relations between town and parish were adjusted by the ecclesiastical law. Without confusion, the ownership and control of the meeting-house was conceded by the town to the parish; the personal property of the parish was generally given up by the town without resistance; only here and there, suits were brought to try the title between town and parish to notes given for ministerial and other lots of land.[3]

§ 2. It was on questions in regard to the town's title to lands in the immediate vicinity of the meeting-house, — lands that had been used by town and parish alike, — that the venerable towns, driven by the

[1] The Rev. Job Cushing was settled at the organization of the church in Shrewsbury, Dec. 4, 1723. The Rev. Ebenezer Morse in Boylston, Oct. 26, 1743. In 1861, the number of churches is 491; all but twenty-six of the towns of Massachusetts being supplied with Orthodox Congregational Societies, showing yet something of the ancient spirit.

[2] St. 1718, ch. 6. St. 1786, ch. 10. Minot *v.* Curtis, 7 Mass. 441.

[3] Ludlow *v.* Sikes, 19 Pick. 323. As early as 1801, trustees were incorporated to manage the ministerial fund in Shrewsbury.

courts out of the meeting-house, took their final stand, and fought their last battle with no mean tenacity. The suits, furnished by this last remnant of church and state law, are decided upon general principles, briefly as follows. To wit: that the common, from its nature and general uses, is town property, yet the parish has rights of convenient access to the meeting-house, burial-grounds, and horse-sheds, over the common; that the parish has an absolute right to the land on which the meeting-house stands, and the land reasonably appurtenant thereto; that in general the parish is a public corporation quite as old, as valuable, and as tenacious of life, as the town itself; that it is not to be deprived of its lawful property once acquired, by any use which it may permit the town, or an individual claiming under the town, to enjoy, for a series of years. As for details of the numerous suits, in which these principles are stated and applied, you would not thank me for analyzing them: they would be dry to the last degree, even to an antiquary.[1] Much money has been expended, and more patience of learned judges, in settling cases for Rehoboth, Malden, Reading, Milton, Ludlow, Medford, Pepperell, and Essex on these general principles. The Court, aided by recollections of aged men as to boundaries, and vague votes of town meetings, taking vigorous hold on presumptions, have come to the practical conclusions following: —

[1] Bachelder *v.* Wakefield, 8 Cush. 249. Lakin *v.* Ames, 10 Cush. 198, and cases cited. Woburn *v.* Co. Commissioners, 7 Gray, 106. Inh. Essex *v.* Low, 5 Allen, 595.

First. That the town of Milton could not efface from a tract of land the parochial traits which were affixed to it by a vote of proprietors in 1659. But the parish of Milton took the land at the end of nearly two hundred years as its own property. Much more, if the parish takes the land by deed originally, as in the case of Essex, although the land may have been sometimes used for municipal purposes, in the long interval.[1]

Second. That the town of Ludlow, on a separation of town and parish in 1835, was bound to give up notes having a parochial character, as well as parochial lands.

Third. In the Medford contests, it was established that schools are property of a municipal character, and horse-sheds parochial. To individuals, there have been solemn applications of these principles. It has been settled that Mr. Smith, without license of town or parish, could not plough up Shrewsbury Common. That Mr. Bachelder, when requested, must move his horse-shed, so as to accommodate the meeting-house, though he had been allowed by the parish to keep the shed in one spot for thirty years. It has also been decided that Mrs. Ames might have the horse-shed of the parish of Pepperell torn down, which stood in front of her family tomb, though the shed was appurtenant to the meeting-house. Acting under a license from Pepperell town, Mrs. Ames was excused for this apparent trespass on parish property.

[1] Inhabitants of Milton *v.* First Cong. Parish, 10 Pick. 447, 1830; Inhab. of Essex *v.* Low, 5 Allen, 595. But a parish may lose its land by disseisin and merger. Rehoboth *v.* Carpenter, 23 Pick. 131, 1839.

These illustrations are enough to convince the reader of the great difficulty of always rendering to Cæsar the things that belong to him, amid the heap and rubbish of parish testimony.[1]

§ 3. We have spoken of these disputed claims of town and parish arising under the old ecclesiastical system, as if they belonged to an obsolete branch of Massachusetts law. But really it is not so In some of the older towns of the Commonwealth there may be materials for these distressing suits. How little it takes to set one of them in motion, we will describe, and thus close what we have to say in this connection.

In the town of Pepperell, in the year 1850, a bereaved mother requests her son to prepare the family tomb to receive the remains of his brother. In executing the pious errand, the son removes a horse-shed which the First Parish of Pepperell had erected, close to the outer wall of the burial-ground, directly in front of the door of the family tomb. The son, thereupon, is sued as a trespasser, who, with force and arms, had invaded the sacred rights of the First Parish of Pepperell. Thereupon follows a legal examination of the respective rights of the Town of Pepperell and the First Parish of Pepperell to the land in, under, and around the burial-ground, the horse-

[1] In Maine, the same doctrines have been enforced by the courts. Boothbay *v.* Wylie, 43 Maine, 387; and cases there cited. The intermittent exercise of parish functions by a town is illustrated in Bucksport *v.* Spofford, 3 Fairfield, 487. The Canada Clergy Reserves, the Vermont Church Lands (4 Church Review, 580), the New York Trinity Church cases, and the Reformed Dutch Church cases, are proofs of the long life of church land claims.

shed, the engine-house, the common, the gun-house, and the hearse-house, — rights hardly brought into notice since Pepperell was separated from Groton and became a parish, more than a hundred years ago. These related rights of town and parish, thus slumbering together, like the various Parkers, Shattucks, Bloods, Prescotts, and Jewetts, in peaceful contact in the burial-ground hard by, without prospect of a speedy, much less of an angry, resurrection, are suddenly called into legal life and open judgment, by the simple command of a mother to prepare the family tomb for the burial of her son. Whatever further materials are remaining, in the old towns of the Commonwealth, for these unwieldy suits, it is to be hoped they may not appear in the courts; for judges have reason enough already to regret, above all men, the ancient union between church and state in Massachusetts.[1]

§ 4. The grave application of remnants of ecclesiastical law to cases relating to training-fields and horse-sheds, in our day, may provoke a smile; but we cannot take leave of the subject without admiration for the piety and sagacity of the early founders of Massachusetts towns. There is something touching, as we read over the warlike enactments of 1775, amid the fearful preparations for a great combat, to find elaborate and careful acts of the General Court, incorporating towns as they had always been incorporated, "provided they had meeting-houses,

[1] Lakin *v.* Ames, 10 Cush. 198. West Cambridge Religious Society, 1856, ch. 183, obtained an act allowing them to fence their land, which was intersected by roads, and obstructed by horse-sheds.

and supported learned and pious ministers a d schools." These founders of towns on a godly basis, we place before builders of cathedrals in all ages. Our venerable fathers adjourned from England to America, to found in Massachusetts towns republican models for states, thereby carrying forward to noble issues a reformation in church and state, which, after a trial of two hundred years, adapts itself to the wants of a family of commonwealths.[1]

§ 5. From the precincts of a Massachusetts meeting-house we are tempted to look at the world at large. We return to the last topic of our chapter. The burial-ground in Massachusetts generally belongs to the town, and, by statute, towns are allowed the charge of it.[2] It was commonly a part of the "meeting-house lot." There are instances where the burial-ground belongs to the parish or religious society rather than the town, by reason of the original grant or deed being made to the parish, or the precinct, which is the equivalent of a parish.[3]

To whomsoever this sacred inclosure belongs by the law, it is very certain that neither town nor parish derive credit from its neglect. The burial-ground, "God's acre," is beginning to receive better attention in our day. The general statutes authorize religious societies "to tax their members for the

[1] That reforms in church and state were carried on to great disadvantage in England, see Punchard's History of Congregationalism, 2d ed. *passim*.

[2] Gen. Sts. ch. 18. § 10; Lakin *v.* Ames, 10 Cush. 198.

[3] Sudbury *v.* Jones, 8 Cush. 184; Stearns *v.* Woodbury, 10 Met. 27.

purchase and preservation" of burial-grounds.[1] Numerous associations are incorporated to take charge of ample and ornamental grounds.[2] It may add to the diligence of guardians of older and more narrow enclosures attached to meeting-houses to know that the ecclesiastical law of England pronounced the greater excommunication "against profane men, who, mistaking their own power and the bounds thereof, marred or cut down the trees in the burial-ground," affectionately styling such trees "the goods of the church."[3] If the old statute, "*Circumspecte agitis*," do not move them to care for trees, a word from my Lord Coke, in regard to fences, will not come amiss. After laying down the law that burial-grounds belong to the parish, "because the more common sort of people are buried there," he insists that the fences should be kept in good repair, "in order to protect the burials of those whose bodies were, or might have been," he cautiously adds, "during their lives the temples of the Holy Ghost."[4] In early times, these obligations to the pious dead (or those who might have been pious, if they had so chosen) were discharged by vote of town meeting,

[1] Gen. Sts. ch. 30, § 20. Appendix C.

[2] Gen. Sts. ch. 28. Appendix D. By St. 1856, ch. 84, West Parish of Newbury, alive to matters of taste and improvement, obtain leave to convey their burial-ground to an association.

The power of towns, under health laws, to regulate burials, is examined, Austin *v.* Murray, 16 Pick. 21; Commonwealth *v.* Fahey, 5 Cush. 408. See, on burial, 31 Examiner, 137, 281; on cemeteries, N. Englander, 1863, Oct., 597; on funeral customs of Connecticut, 1827, 9 Monthly Spectator, 118.

[3] Burns' Eccl. Law.

[4] 2 Inst. 489.

"*to see about* fencing and clearing the meeting-house lands; or to see about allowing the inhabitants to cut the brush that grew about the yard; or to clear away the brush at the west end of the burying-ground, and also the birches and poplars at the north end of the burying-ground." [1] The town of Andover went farther than this: it tenderly prohibited the pasturing of "large cattle" in the burying-ground, confining the privilege to "sheep and calves." But, in our days, a vote in town meeting to cut the brush in the burial-ground, and to keep the oxen out, will hardly pass for a sufficiently delicate attention to the memory of our departed townsmen, whether they have died in the faith or not.[2]

We have *circumspecte agitis* embodied in § 12 of ch. 28 of our Gen. Sts. Under it, the Court held that the owner of the fee of an ancient burial-ground cannot now cut off the trees for his own use, without authority, although his ancestors may have always treated the land as their own.[3]

No condition or circumstance relating to the living or dead seems to have escaped legislation. Since 1811, a creditor's right, at common law, to attach and keep his debtor's corpse, has been taken away; the sheriff attempting to enforce

[1] Shrewsbury *v.* Smith, 14 Pick. 300.

[2] What is sufficient baptism to entitle a dissenter to church burial, under the Act of Uniformity, 1662, is decided by the Privy Council. Escott *v.* Martin, 1 Eccl. Cases, 552.

[3] Commonwealth *v.* Vial, 2 Allen, 512. As to offensive structures on a public burial-ground once in use, see Com. *v.* Wellington, 7 Allen, 299.

such right is visited with the penalty of five hundred dollars.[1] The husband's control over a grave-stone erected by him to his wife has been vindicated against the claims of the mother-in-law to erect a new stone;[2] while the respective rights of owners of cemeteries, city corporations, and the next of kin, are learnedly discussed in the Report of Mr. Samuel B. Ruggles to the Superior Court of New York in 1856, the claims of the next of kin, in the absence of all testamentary disposition, being held paramount.[3]

[1] Gen. Sts. of 1860, ch. 165, § 36.
[2] Daniell *v.* Hayward, 9 Gray, 248.
[3] 61 Examiner, 338.

CHAPTER XIII.

Charities — Jurisdiction — who are Beneficiaries — Construction of Charities — Harvard Seminary — Bills to enforce — Statute of Limitations — Religious Belief of Founders — Subscription to Funds — Visitorial Power — Andover Seminary — Bowdoin College — Control of Legislature — Income limited — Charitable Corporations numerous.

§ 1. An Essay on the Ecclesiastical Law of Massachusetts, that did not allude to charities, would be quite incomplete. Our aim will be to examine the subject in a limited manner, without drawing into it everything that has been pertinently said in relation to deeds, wills, trusts, and legacies for charitable purposes.

Whatever the jurisdiction of the Great and General Court over charities might have been, it was shared by the county courts under the colony laws; and under the Royal Charter, in 1685, by the President and Council of New England.[1] After the Revolution, the Supreme Judicial Court exercised this jurisdiction; the General Court continuing to exercise at least a concurrent jurisdiction by special acts.[2]

Before the statute of 1818, giving jurisdiction to the Supreme Judicial Court in all cases of trust,

[1] Hadley *v.* Hopkins, Grammar School, 14 Pick. 253.

[2] An illustration of such acts may be seen: Roxbury Free School acts from 1669 to 1716; St. 1803, ch. 44, in aid of the Boylston donation; and Count Rumford's donation, St. 1830, ch. 90, cited in the Price Will case, 1865.

arising under deeds, wills, or in the settlement of estates, the Court had exercised that jurisdiction in cases affecting charities, as if the statute 43 Elizabeth had been fully adopted by our ancestors. Bartlett *v.* King, decided in 1815, seems to have taken it for granted.[1] The questions formerly raised are now well settled in Massachusetts, that the statute 43 Elizabeth was adopted as a part of the colony law; and the better opinion is, since the discussions in the Girard Will case, that, at common law, charities were protected. Our courts do not hesitate to save from the hands of heirs, residuary legatees, and other claimants, many donations because they have the element of charity, whether they are contained in wills, deeds, or grants *inter vivos*.[2]

§ 2. This element of charity has been decided to exist in the following cases, sufficiently to save them from lapsing for uncertainty or vagueness, or want of capacity in the donee to take the gift.

A bequest "of the residue of my estate, both real and personal, to the cause of Christ, for the benefit and promotion of true evangelical piety and religion, to be appropriated by A, B, and C, as they may think fit and proper,"[3] is a charity. "A bequest to the wardens and vestry of St. Paul's church, five thousand dollars, as the formation of a fund which I

[1] 12 Mass. 537. 43 Eliz. ch. 4.

[2] Going *v.* Emery, 16 Pick. 107; Vidal *v.* Girard's Executors, 2 Howard, 127; Thomas *v.* Ellmaker, 1 Par. 98; General Statutes, ch. 113, § 2.

[3] Going *v.* Emery, 16 Pick. 107; Wells *v.* Doane, 3 Gray, 201.

am desirous should be established for the support of a city missionary of the Protestant Episcopal Church," is also a charity.[1] A bequest "to maintain public lectures, to be delivered in the city of Boston, upon philosophy, natural history, and the arts and sciences, or any of them, as my trustees shall think expedient, for the promotion of the moral, intellectual, and physical instruction and education of the inhabitants," is the aim of the Lowell Lectures, which has been held a noble and comprehensive charity.[2] Towns and groups of towns,[3] religious societies, churches, ministers, overseers of the poor, colleges, schools, theological seminaries,[4] charitable institutions, incorporated and unincorporated, whether in the Commonwealth or out of it, have been held proper objects for charitable gifts, deeds, devises, and bequests.[5]

In the case of a legacy to the Concord Female Charitable Society, it was no objection that the do-

[1] Sohier *v.* Wardens, 12 Met. 250.

[2] Lowell Appellant, 22 Pick. 215. See Tudor on Charitable Trusts, ch. 6, § 1, for English definitions.

[3] It is to be hoped that the Oliver Smith charity, in which Northampton and seven towns are interested, may not prove a nucleus for legislation like the Edward Hopkins fund, in which Hopkinton and Upton were interested. Mr. Hopkins' 12,500 acres gave rise to St. 1741, Resolve 1796, Report of Judges, 1825, House Doc. No. 54, 1830, Senate No. 24, 1832, ending in a threatening of anti-rent war. Foster *v.* Briggs, 3 Mass. 313; Adams *v.* Bucklin, 7 Pick. 121. See Biblical Repository, 1842, 184.

[4] Burbank *v.* Whitney, 24 Pick. 146; Trustees Phillips Academy *v.* King, 12 Mass. 546; Webb *v.* Neal, 5 Allen, 575.

[5] To purchase and repair a burial-ground, held a charity, Dexter *v.* Gardner, 7 Allen, 247. Fire companies in Pennsylvania are ranked among charities, Thomas *v.* Ellmaker, 1 Par. 98, 1844.

nees were not only unincorporated residents of New Hampshire, but were some of them married women, whose husbands might take the money.[1]

§ 3. The Court, in cases of charity, have always discovered an amiable interest in finding out the donee, if it could be done without too great a straining of rules applicable to wills and instruments in writing; and for the donee, when found, they have carefully guarded the gift.

If the testator has made no appointment, the Court treat the heir or executor as trustee for the charity; and may compel him to execute the trust, whether it affects real or personal property; or they may appoint a new trustee.[2] Thus, in the case of the married women of Concord, a trustee was appointed, "a suitable person to hold the donation, in trust, for such charities as are administered by said voluntary society of women." [3]

And in case of a donation "to the Marine Bible Society," there being no such society in existence, but there having lately been a "Boston Young Men's Marine Bible Society," which was then extinct, the Court directed a trustee to take the fund, and distribute it as nearly as may be according to the regulations of the extinct society, in procuring Bibles for seamen.[4]

Where a testator called the object of his bounty

[1] Washburn *v.* Sewall, 9 Met. 280.

[2] Bartlett *v.* Nye, 4 Met. 378; Brown *v.* Kelsey, 2 Cush. 243.

[3] The *male* members, in a monthly meeting of Quakers, are held to be adequate trustees of a charity, Dexter *v.* Gardner, 7 Allen, 243.

[4] Winslow *v.* Cumming, 3 Cush. 358; Bliss *v.* American Bible Society, 2 Allen, 334.

"the Boys' Asylum and Farm School," the fund was appropriated to the "Boston Asylum and Farm School for Indigent Boys," there being no society, incorporated or unincorporated, of the former name.[1]

But where a testator gave a legacy expressly to "the Seaman's Aid Society in the City of Boston," the Court refused to admit testimony showing that the testator really intended another society, "The Seaman's Friend Society," as the object of his bounty.[2]

§ 4. The Court not only charge themselves with the labor of ascertaining by careful examination whether the bequest is charitable, in whom the charity vested in its origin; they also inquire whether it has been properly administered, who are entitled to the present custody of the fund, and the benefits flowing from it.[3] In the case of a deed of lands to trustees "for the uses, intents, and purposes of the people called Quakers, forever, the trustees to convey the same on request to the overseers of the Swanzey Monthly Meeting," provided "said overseers are in unity with the New England Yearly Meeting," the Court, with exemplary, almost sublime, patience,

[1] Minot *v.* Boston Asylum, 7 Met. 416.

[2] Tucker *v.* Seaman's Aid Society, 7 Met. 188. That the Commonwealth may gracefully decline a donation made to itself improvidently, see House Doc. 1859, No. 91, in the matter of Isaac B. Woodbury's bequest.

That a legacy may sometimes be lost for want of prompt notice of its acceptance, see Colonization Society *v.* Smith's Trustees, 2 Allen, 302. What is a partial acceptance of a legacy, by a compromise among the legatees of the Price Lectures fund, see Attorney General *v.* Rector and Wardens of Trinity Church, 1864. 9 Allen.

[3] Fisher *v.* Ellis, 3 Pick. 322; Raynham *v.* Raynham, 23 Pick. 148

entering into all the questions of law, doctrine, and fact involved, decide that the uncertainty of the parties who are to be benefited does not invalidate the original deed to the trustees, who take a charitable estate for the use and benefit of the Swanzey Monthly Meeting, a class of Quakers living within a defined territory, and not for the Friends in general; and that Oliver Earle and his associates, of the Orthodox persuasion (amid the conflict of testimony about the choice of clerks, and who constituted the yearly meeting), are "the overseers now in unity with the New England Yearly Meeting," and are, as such, entitled to hold the lot of land in Swanzey, to the exclusion of William Wood and others of the Hicksite persuasion.[1]

It is not the labor of ascertaining the beneficiary that will prevent a charity from being supported; but the labor, combined with improper elements, will sometimes induce the Court to execute the charity in part only. Thus, a donation to a town to support a public school, excluding nine persons by name, and their descendants for one hundred years, is held a charitable donation, which goes to the town, discharged of its invidious features.[2]

[1] Earle *v.* Wood, 8 Cush. 430. The Massachusetts Court was aided by the investigations made in New Jersey, 1832, in the case of Hendrickson *v.* Decow, 1 Saxton, 577, where the questions of Quaker polity and doctrine were examined at great length, 30 Examiner, 237; 52 Examiner, 321; Dexter *v.* Gardner, 7 Allen, 243, where the functions of the various meetings — particular, preparative, monthly, quarterly, and yearly — are discussed, and their capacity to take a charitable bequest.

[2] Nourse *v.* Merriam, 8 Cush. 11. A bequest to a school, where only

While the Court are reluctant to see a charitable intention of any definiteness fail for want of trustees or for any other exigency, they do not, as in England, on the mere discovery of a charitable intention, however vague, call on the Attorney General to elaborate a scheme of charity to fit the occasion, and execute the same *cy pres*, or as near as may be.[1]

§ 5. The Court, under the General Statutes, "may hear and determine in equity all cases, when the parties have not an adequate and complete remedy at the common law." In suits and proceedings for enforcing and regulating the execution of trusts, whether the trusts relate to real or personal estate, under the statute, the Court are governed by the nature and original features of the charity, as well as by settled chancery rules. On these grounds they have declined to entertain that "plentiful" jurisdiction said by Lord Coke to belong to the English Chancery. On the application of the president and fellows of Harvard College for leave to transfer to new trustees, disconnected with the college, funds

Bibles and spelling-books were to be used, held good. Tainter *v.* Clark, 5 Allen, 66.

English statutes of mortmain were never in force in Massachusetts. 4 Dane, Ab. v. 238, 239. As to our early mortmain statutes, 1754, 1785, see Bartlett *v.* King, 12 Mass. 545.

For English distinctions in regard to Roman Catholic gifts for superstitious uses, perpetual masses, &c., see West *v.* Shuttleworth, 2 My. & K. 684. As to Jewish trusts, 28 Bear, 1; as to Shaker, Thornton *v.* Howe, 10 Week, 642; 13 Law. Mag. and Rev. 109, 202.

[1] Baker *v.* Smith, 13 Met. 34, ch. 113, § 2. For a limited use of the doctrine of *cy pres*, see Count Rumford's donation, cited in Attorney General *v.* Trinity Church. For the English doctrine of *cy pres*, see Tudor on Charitable Trusts, ch. 6, § 2.

given to themselves originally, for the promotion of theological education in the college, the Court refused to make the change, though the connection between the college and the divinity school was inconvenient, and the separation would be advantageous to both. Where serious changes are desired, the Court must know that trustees already appointed have not power to accept the trust, or it has not been thus far faithfully administered; or the objects of the charity have failed; or the parties holding the trust have refused to accept or execute it; or the funds have accumulated beyond the uses of the charity, and the trustees ask for directions as to the application of the surplus.[1]

§ 6. The supervision of the Court is exercised on application of the attorney general, in case the matter affects a public charity. In this connection, it has been decided that while a religious society is a public corporation in some points of view, it is not necessarily a charity.[2] Members of any denomination associating together to erect a house to be used

[1] Harvard College *v.* The Society for Promoting, 3 Gray, 280; 45 Examiner, 355. The separation of the divinity school refused by the Court was afterwards allowed by Resolve, 1858, ch. 176, of the Legislature. The control of the Legislature over funds is examined in the case of 1st Parish, Portland *v.* 2d Parish, 22d Connecticut; and the power of the Legislature of New York to alter the charter of Trinity Church is examined in Judge Redfield's pamphlet, 1858. In 1837, the chancellor of New Jersey denied the power of merging books and funds of a seminary, by vote, into the seminary of another denomination. Trustees of Associate Reformed Church *v.* Princeton Theological Seminary, 3 Green, ch. 77.

[2] St. Luke's *v.* Slack, 7 Cush. 226; Statutes 1849, ch. 186, § 8; General Statutes, ch. 14, § 20; Goddard *v.* Smithett. 3 Gray, 116.

by themselves and others for public worship may become a religious society, but are not engaged in a charity in the legal sense, and cannot on that ground be brought before the Court by the attorney general.[1]

It has been settled that a Congregational church does not become a public charity, and exposed to the attorney general's examination, by having funds left to it, which it may apply to such purposes as it chooses.[2]

What amounts to a dedication to public religious worship, so as to bring the subject matter within the supervision of the attorney general, has been much discussed in the recent case of St. Ann's Church, Lowell. And it is there held that a manufacturing company, after building a house for public worship on their own land, and allowing it to be consecrated with religious rites, retaining, however, the fee and control in themselves, have made no legal dedication.[3] But schools and colleges are charities, though limited to towns and classes. Thus we have, in 1848, the district attorney inquiring of the Court, whether the Putnam Free School of Newburyport might educate "boys and girls" under the will of the founder, who had left a fund for the education of "youth."[4]

Robertson *v.* Bullions, 9 Barbour, 64, gives the view taken of religious societies by the courts of New York.

[1] See ch. 9, § 10. Attorney General *v.* Federal Street Church, 3 Gray, 1.

[2] Parker *v.* May, 5 Cush. 336; Attorney General *v.* Trinity Church, 1865. For Informations, Bills and Petitions, see Tudor on Charitable Trusts, ch. 5.

[3] Attorney General *v.* Merrimack Co., 14 Gray, 586.

[4] Nelson *v.* Cushing, 2 Cushing, 521.

§ 7. Though a public examination through the attorney general cannot be had, parties may try their rights by bill or suit. In the year 1827, the residuary legatees under the will of Lemuel Drake, by writ of entry, claim a tract of land devised to the town of Stoughton by their ancestor, to build a school upon, because the town for twenty years had neglected to build. The forfeiture was decreed by the Court, the town having delayed an unreasonable time.[1]

Residuary devisees have obtained the forfeiture of a lot which had been conveyed to a religious society on condition that it should be forever used as a meeting-house lot; although the society, when they rebuilt elsewhere, expressly voted that they did not intend to abandon the lot.[2]

In another case, where the conditions in the deed of a lot of land to a Methodist religious society were twofold, — first, that the control and direction should be secured to the anti-slavery members of the church; second, that in no case should the General Conference of the Methodist Episcopal Church have any control, — it was held that a forfeiture of the land was wrought when the bishop, at the request of the society, sent a minister, and the minister appointed nine trustees; although said trustees might be anti-slavery men.[3]

[1] Hayden *v.* Stoughton, 5 Pick. 528. What is a reasonable time, and the effects of delay, are discussed further in Tainter *v.* Clark, 5 Allen, 66.

[2] Austin *v.* Cambridgeport, 21 Pick. 215.

[3] Guild *v.* Richards, 16 Gray, 1860. This case has an exposition of the Methodist polity, showing the control of the meeting-houses to be in the ministry; and the control of ministers in the conference. S. P. People *v.* Steele, 2 Barbour, 397, N. Y., 1848.

The Court does not measure its care of charities by the form of the suit brought. We have the president of Bowdoin College, in 1833, by a simple suit at law in the United States Court against the treasurer, for his salary and perquisites, obtaining a learned and favorable construction of the charter of that literary corporation.[1] However, a bill in equity is the usual course where parties are numerous, who consider themselves entitled to the custody of charitable funds, or any description of relief. Under the early, as well as the later statutes, these applications by bill were made. The inhabitants of Hadley, in 1833, apply to the Court by bill to exclude from the Hopkins Grammar School, founded in 1657, all but their own inhabitants, which the Court declined doing. But in granting the prayer for a general construction of this charity, the Court illustrate the doctrine, that, in its supervision of charities, no objection is taken to perpetuities, and the possession of the trustee is not adverse to that of the beneficiary.[2]

It is to be borne in mind, that in these applications for relief, whether made by the attorney general, by bill or by suit, that the laws of pleading and practice are not relaxed in favor of charities; that the Statute of Limitations is also applied to charitable cases, where the possession is clearly adverse, beginning to run from the commencement of such

[1] Allen *v.* McKeen, 1 Sumner, 276. As to charities, U. S. Courts are governed by State laws. Loring *v.* Marsh, Miss. Cir. Sess. 1865.

[2] Hadley *v.* Trustees Hopkins Grammar School, 14 Pick. 253. In the House of Lords, it is held, that, in case of an ancient trust for promoting godly learning, Dissenters are not proper trustees. Baker *v.* Lee, 2 Times Rep. 701.

adverse possession.[1] Heirs and residuary legatees of donors who indulge expectations of succeeding, in process of time, to the charitable devises and bequests of their ancestors, will do well to remember the application of the Statute of Limitations in the Brattle Street Parsonage case; where it was held that heirs of Mrs. Hancock, who appeared by her will to have a *perpetual* claim, were nevertheless effectually cut off by the rule against perpetuities, on the death of those in being at the decease of Mrs. Hancock and twenty-one years thereafter.[2] Landed proprietors who hope to work a forfeiture for a breach in the condition of a deed may derive instruction from the Methodist Church case at East Cambridge. It is there held that the clause in a deed restricting the use of land to a "meeting-house" is repugnant to the *habendum* of the deed, which allows it to be used for a "meeting-house, parsonage, and school," and therefore void.[3]

§ 8. When the inquiries are made in proper form and in due time, the Court enter on the necessary investigation. If the enjoyment of the property real or personal depends on the party maintaining a specific faith, definitely described by the donor, the faith of the donee, or those claiming under him, is looked into.

[1] Attorney General *v.* Proprietors, 3 Gray, 1.

[2] Proprietors *v.* Grant, 3 Gray, 142; Wells *v.* Heath, 10 Gray, 26. When charitable funds must vest, see Odell *v.* Odell, 10 Allen.

[3] Proprietors of Canal Bridge *v.* Methodist Society, 13 Met. 335. Those claiming no descent from the original devisors have a very slight prospect of recovering lands devised to a religious society, whatever may be the present changes in polity and doctrine from those of the original grantee. King's Chapel *v.* Pelham, 9 Mass. 501; 14 Examiner, 268; Attorney General *v.* Proprietors, 3 Gray, 1.

Thus the inhabitants of Princeton, in their parochial capacity, were held not entitled to a legacy under the will of Mr. Boylston, given in 1818, for the use and improvement of the then pastor of the Congregational Church and Society and his successors, "so long as he or they continue to be pastors, and do preach and maintain the same essential doctrines and principles of faith and practice as are now preached and taught." The ground of refusal was that the former pastor, in 1818, was Unitarian, and the present pastor was Trinitarian; the Court denying that "any school of theology or jurisprudence ever considered these two systems one and the same." [1]

Many of the difficulties in the Quaker case already cited arose from the grantor in the deed limiting the use of the land to those in "unity," requiring of the Court an examination of the doctrine as well as discipline of the denomination.[2]

In the case of a legacy to Phillips Academy, the Court distinguish between the cardinal object of the institution, which is "to teach our Holy Christian Religion," and the means by which that object is to be accomplished; and they pronounce the Calvinistic and Hopkinsian means to be virtually the same,

[1] Princeton *v.* Adams, 10 Cush. 128; see also Council at Princeton, 1817.

[2] The Excision and other proceedings of 1837 show the danger of making the title to property depend on a connection with a synod, presbytery, or general assembly. Repertory, 1837, 476, 485. That a strict compliance in regard to time, place, and doctrine is held necessary to entitle one to the use of a ministerial fund, see Hunt *v.* Perley, 34 Maine, 32.

and alike good.[1] Where the terms of the deed founding the charity, however, are not clear and precise, but obscure, doubtful, and equivocal, our courts are not disposed to lay too much stress on evidence of the views of the founder; especially, in case of donations to religious societies. Thus, in New Hampshire, the words "Congregational persuasion" do not confine the enjoyment of a legacy to those of the Orthodox in distinction from the Unitarian belief, especially where the tenets of the donor himself are not very marked;[2] and in the case of the Federal Street Meeting House, the words in the deed conveying the land to trustees to be held "according to the tenures and after the same manner as the Church of Scotland hold and enjoy lands," refer not to the religious doctrines of the associates, but to the legal tenure by which the land is held; and they do not prevent the pew-owners from changing by vote both doctrine and denomination.[3]

[1] Trustees Phillips Academy *v.* King, 12 Mass. 537. In Pennsylvania, the union of Associate Seceders and Associate Reformed Synods held good. 6 Wright's Reports. McGinnis *v.* Watson. In New York, Calvinistic and Arminian adherents to the Heidelberg Catechism have been held equally meritorious. Miller *v.* Gable, 2 Denio, 535. The incidental and main objects of a grant are distinguished in Commonwealth *v.* Fisk, 8 Met. 238. Tudor ch. 6, § 1.

[2] Dublin Case, 38 New Hampshire, 460, where the early history of Unitarianism in Massachusetts is traced. 20 Examiner, 240. The difficulty of fixing the creed of an individual is illustrated by the Hollis Professorship. 7 Examiner, 64. 2 Sp. Pilgrims, 581.

[3] Ch. 9, § 5. Att'y-Genl. *v.* Proprietors, 3 Gray, 1. In New York, the facility of changing from the Congregational to the Presbyterian polity is illustrated by Robertson *v.* Bullions, 9 Barbour, 64; Belport *v.* Tooker, 29 Barbour, 257; *per contra*, ch. 9, § 6. The Unitarian Relig-

In construing wills, deeds, and other charitable instruments, great use is made of the laws in force in *pari materia*, as well as the acts of the donor and his associates. In Earle *v.* Wood, Attorney-General *v.* Federal St. M. Ho., Hadley *v.* Hopkins Grammar School, and Attorney General *v.* Trinity Church, Boston; so, too, in the New Hampshire case; the Court felt bound to take notice of the contemporaneous construction, and of all the facts and circumstances that might aid the investigation, whether stated by counsel or not.[1]

§ 9. Few American charities are endowed in the outset. The work is commonly done by various subscribers; and the question has risen, to what extent subscribers are bound to pay subscriptions. Such subscriptions, and notes given in pursuance of them, at an interval after the subscription, are now held binding. Whatever early objections may have been taken, they are now overruled. The consideration is held sufficient, though in the interval the note given to found an academy has been transferred, without indorsement, to a new corporation, authorized to found a college in furtherance of the objects of the academy, and take its subscriptions.[2] In

ious Society of Cincinnati, incorporated, but having no creed, was allowed to dissolve itself by vote of the majority; a part of the proprietors joining a kindred religious society. Wiswell *v.* Green, Superior Court, 1860.

[1] Feoffees of Ipswich Grammar School *v.* Andrews, 8 Met. 587.

[2] Amherst Academy *v.* Cowles, 6 Pick. 427. It seems to be a principle now of Massachusetts colleges, that no religious test is to be required of professors or students. See Amherst College, special laws 1825, ch. 85, § 6. See, also, in 1849, House Doc. 130, in regard to

a subsequent case, the defendant was not excused from paying his subscription, made on condition that the funds be employed in a certain town, by the fact that the plaintiffs had endeavored, in the interval, without success, however, to obtain a charter for locating the college in another town.[1]

In all such cases, the mutuality of the promises, as well as the charity of the object, is insisted upon; and the power of the Court to compel the plaintiff to execute the trust which he assumes, on his part, towards the subscribers, is asserted.[2]

chartering the College of the Holy Cross, 47 Examiner, 51. Also Tufts College, special laws, 1852, ch. 141, § 6. What tests are legally applicable to professors of Columbia College, New York, before their election; discussed, Church Review, 7, 284; 57 Examiner, 53. Tests for officers in Yale College were abandoned, 1822; they were never applied to students. From the reign of Charles II. to the statute of 1854, undergraduates of Oxford and Cambridge subscribed the Thirty-nine Articles; candidates for degrees above A. B. still do so. In the Scotch universities, no tests have been applied to teachers since 1853; never to students.

[1] Williams College *v.* Danforth, 12 Pick. 541.

[2] Hanson *v.* Stetson, 5 Pick. 506; Thompson *v.* Page, 1 Met. 565; Ives *v.* Stirling, 6 Met. 310; Watkins *v.* Eames, 9 Cush. 539; Mirick *v.* French, 2 Gray, 420. Gorman *v.* Carroll, 7 Allen, 199, as to subscriptions obtained by misstatements.

As to the specific appropriation of funds in Meth. Epis. Ch., see 4 Bangs' History of M. 175. State donations for all colleges are described in House Doc. 26 for 1832.

Applications from Amherst College may be found in House Doc. 105, 1847; Senate Doc. 134, 1854. For Williams College, in 19 Senate Doc. 1842; 60 House, 1843.

At the head of a list of 60 incorporated Academies, stands Phillips' Academy, Andover, incorporated Oct. 4, 1780. The academies have been but little aided by the State, House Doc. No. 16, 1827; 1848, House Doc. 32. For New England Schools, see Bib. Rep. 1841, 137. For early and later Massachusetts educational laws, 5 Chr.

§ 10. In regard to most of the successful charities, that have existed a few years, it becomes necessary to know where the visitorial power resides. The founder may appoint his own visitors. In case he makes no appointment, but entrusts the management and control of affairs to trustees, such trustees are virtually visitors, under the superintendence of the Court. The Court have decided that there is no power of visitation left in the heirs of the founders, by bill in chancery or other means, in case of neglect of the trustees, their misapplication of funds, or other breach of trust; the Court following, in 1836, the law as laid down in Dartmouth and Bowdoin Colleges.[1] In most of the elaborate charities, the visitorial power is lodged in a board of visitors by the statutes of the founder and act of incorporation, whose powers are regulated with considerable care. In the case of Bowdoin College, the board of visitors were a separate corporation.[2]

On appeal by a professor of the Theological Sem-

Review, 396; 6 do. 1. Bib. Sac. Oct. 1850, as to colleges and professional schools.

That separate schools for colored children in Massachusetts are constitutional, see Roberts *v.* Boston, 5 Cush. 198, 1849. That colored children, inhabitants of other States, might not safely be taught in Connecticut, see Crandall *v.* State, 1834, 10 Conn. 340; Am. Jurist, xi. 244.

[1] Sanderson *v.* White, 18 Pick. 328. Tainter *v.* Clark, 5 Allen, 66. What force is to be given to the compromises of visitors, and their constructions of the trust, see Att'y Genl. *v.* Trinity Church, Boston, 1865.

[2] The trust deed of Mr. William Appleton, for founding an Episcopal Theological Seminary, makes the bishops of the New England States visitors. See Mass. Convention, 1846, 48. As to visitors in England, see Tudor, ch. 4, § 2, 3. In the charter of the Abbot Female Academy, Andover, 1829, the trustees are stated to be the visitors.

inary at Andover from a final decree of the visitors, depriving him of office, the Supreme Judicial Court hold themselves restricted to the inquiry, whether the visitors have acted contrary to the statutes of the founders, and exceeded their jurisdiction. In such examination, the Court is also confined to the record of the visitors, and cannot rehear the evidence. Any irregularity not apparent on such record of the visitors cannot be noticed; especially do the Court refuse to notice antecedent irregularities of the board of trustees, for which an appeal was taken to the visitors, and by the visitors sustained. Whatever the grounds of objection to such professor, they must be "fully and plainly, substantially and formally," made known to him. And the statute causes for removal being "gross neglect," do not include minor defects of temper and conduct, stated fully in the protracted examination of the case.[1] The visitors are held also to general impartiality, fairness, and liberality in the examination of testimony, in the admission of counsel, and other matters in the course of their examination; and the professor accused is entitled, 1st, to a citation to appear; 2d, a charge to answer; 3d, a time for proofs and answers; 4th, liberty of counsel to defend his cause; 5th, a solemn sentence, after hearing and answer.[2]

[1] Murdock, appellant, 7 Pick. 303. See 9 Church Review, 508, for incidents of the case; also Andover Semi-Centennial, 16 Bib. Sac. 672.

[2] Murdock *v.* Trustees, 12 Pick. 243. The principles of notice and appeal familiar to the English ecclesiastical courts are stated in the following recent cases: As to specific statement of charges in doctrinal cases, see Heath *v.* Burder, 2 Times Rep. 670. No appeal lies from the Privy Council to the bishops in convocation, Gorham *v.* Bishop Exeter,

§ 11. The case of Dr. Murdock, in 1831, was followed, in 1833, by the case of President Allen, of Bowdoin College, where the rights of visitors, officers, and legislatures were all brought into solemn review. It was there held that Massachusetts, having founded and partially endowed Bowdoin College, and consented to the appointment of a board of visitors, retained no visitorial power over this private charitable corporation ; that she could not resume her grants either of visitorial power or of land ; nor could the Legislature of Maine, after the separation from Massachusetts, without the assent both of the college and of Massachusetts, make changes in the visitorial board, unless such changes are for the " best interests of the college," and are first proposed by the college boards of trustees and overseers ; which changes must be concurrently agreed upon by the Legislatures of both States.[1] It was also held, that the assent of the president and both the boards of trustees and visitors cannot be presumed, so as to make valid

14 Jurist ; nor from the decision of the archbishop revoking a minister's license to preach, Poole *v.* Bishop London, 4 Times Rep. 225.

[1] Allen *v.* McKean, 1 Sumner, 276. By St. 1865, ch. 173, the overseers of Harvard are to be elected by the alumni, when the assent of the overseers and president and fellows is obtained.

On the early agreement in doctrine and instruction between Harvard and Yale, see Biblical Repository, 1841, 177, and 1842. It seems that Williams is the only New England college that retains the Assembly's Catechism as a text-book.

An enumeration of the Commonwealth's acts of supervision in the affairs of Harvard College, and changes made in the government of the college, may be found in Sen. Doc. 1849, No. 158. Constitution, ch. 5, § 2, and St. 1851, ch. 224, contain the general features of government in this college, which was, until A. D. 1700, the corporation of the Commonwealth.

and binding on the college any unconstitutional changes, made by the State of Maine in the character and construction of the boards. Moreover, these boards are not to be held by their "acquiescence," in order to avoid collision with the State of Maine, to have "accepted" such changes as were not for the best interests of the college. As to the president of the institution, elected to his office during "good behavior," he has such a tenure in the office, that he cannot, by a summary act of the Legislature of Maine, without charges, be removed therefrom.

§ 12. What modest power, in furtherance of its original grant, the General Court of Massachusetts may properly exercise over such grant, after due notice, on petition of the parties interested, is discussed in the case of Lanesboro' and the resolves of 1797, 1814, and 1837, relating to the sale of their ministerial lot, and the distribution of the fund. It was there held, that a grant made to the town of Lanesboro', in 1741, for the benefit of the ministry, accrued to the advantage of ministers of after-born denominations; and a proviso to that effect in the resolve of 1797, could not be easily dispensed with, after an "acquiescence of fifty years."[1] The very limited power of the General Court, by acts and resolves, to interpose in private transactions, has also

[1] Humphrey *v.* Whitney, 3 Pick. 164; Lanesboro' *v.* Curtis, 22 Pick. 330. Large visitorial and supervisory claims for the General Assembly of the Presbyterian Church, extending to charities, colleges, academies, seminaries, missions, publications, and church edifices, have been made in imitation of the Scotch Presbyterian establishment. Spectator, 1832, 142; Repertory, 1837, 101; Rep. 1853, 560. As to Meth. Episcopal Church and its supervisory claims, see Porter's Comp. In

been examined by the Courts. As it trenches on the judicial power, and may violate rights already vested, the tendency is to confine it within narrow limits here also; such as the protection of public officers, executors, and trustees.[1]

The contest between states and corporations carried on in Dartmouth College *v.* Woodward, and in Allen *v.* McKeen, have so distinguished between public and private corporations, as to put all colleges, and with them certainly all the older charitable institutions, in the safe class of private charities, and, in a certain sense, beyond the reach of the Legislature. The statute making all incorporations, granted since March 11, 1831, liable to amendment, alteration, and repeal by the General Court, was intended to bring modern incorporated charities into new and intimate relations with the Legislature. How far it may accomplish the object remains to be seen; whatever may be the result, the cases cited have their importance in this connection.[2]

§ 13. With salutary recollections of the ecclesi-

New York, the claim to visit Union College and alter its charter was discussed in 1823, in pamphlets; and again in, 1853, learned opinions were given against the right. For English efforts, extending from O'Connell's act in 1830 to 1860, for bringing Roman Catholic trusts under supervision, see 12 Law Mag. & Rev. 36. For reports of Commissioners on Public Charities, see documents of House Rep. since 1860. For Boston Charities, N. Am. Rev. 61, 135.

[1] Davison *v.* Johonnot, 7 Met. 388; Sohier *v.* Massachusetts Hospital, 3 Cush. 483.

[2] General Statutes, ch. 68, § 41. Happily we have not the embarrassment of the Church of England, which desires a reform of convocation, while it fears Parliament, which is to make the reformation. 11 Church Review, 1.

astical tendency to accumulate, many institutions specially incorporated for literary, benevolent, and religious purposes, are limited to a fixed capital or a fixed income; otherwise they might claim exemption under the rules of law which do not prohibit charitable perpetuities or charitable accumulations. The statutes limit a church to a yearly income of two thousand dollars; the overseers of each monthly meeting of Friends to five thousand; and those associating themselves under ch. 23, for religious, charitable, and educational purposes, may hold real and personal estate not exceeding one hundred thousand dollars. To religious societies there is no limit set as to capital or income.[1] As we bring this chapter to a close, we are impressed with the great number of incorporations, *quasi* incorporations, and aggregate bodies, to which our statute or common law of charitable trusts may become applicable in some stage of their existence. Without effort, we recall ministers and ministerial fund associations, deacons, parishes, and religious societies, to be numbered by hundreds; colleges, academies, and schools, scientific, benevolent, theological, and missionary institutions, in lesser groups.

Whether we confine our attention to those incorporated by general or special statutes, the array is large enough; for there is hardly a combination of men and women by which the world may be blessed and elevated that has failed to receive the unction of

[1] Gen. St. ch. 30, § 28; ch. 31, § 7, 8. For English and New York laws on this subject, see Thellusson *v.* Woodford, 4 Vesey, 318; 2 Kent, 253; 4 Kent Com. 286; 13 Law Mag. and Rev. 202.

incorporation in Massachusetts, excepting always those earliest, divinest associations, the family and the church.[1]

[1] The English Charitable Commissioners' Reports, 1844, extended to 38 fol. vols., embracing twenty-five thousand trusts of less than fifty pounds income. 1 Law Mag. and Rev. The acts, orders, and schemes relating to charitable trusts and uses, schools and grammar schools, growing out of these Reports, may be found in Tudor, parts 2 and 3. The special acts incorporating Massachusetts charitable, literary, and religious institutions, from 1780 to 1847, may be found Senate Doc. 90, for 1836; House Doc. 32, for 1848. Upwards of seven hundred special acts are enumerated. The ecclesiastical and the voluntary methods of supporting missionary and benevolent societies are discussed, Repertory, 1837, 485; do. 1838, 257; Bib. Repository, 1837, 101: do. 1844, 416; 8 Chr. Rev. 321; Church Review xi. 455, xiii. 390. The repeal of church and state connections, appears to have given a new impulse to voluntary associations.

CHAPTER XIV.

Marriage — Celebrated by Justices of the Peace or Ordained Ministers — Ministers classified — Publishment — Consent of Parents — Clerk's Record — Penalties incurred — Age of Consent — Capacity — Color — Ceremony — Minister's Record.

§ 1. It is sometimes said that the Council of Trent prescribed that all marriages should take place in the presence of a clergyman; but the prescription was not adopted in England, and therefore not brought by our ancestors to this country. A more exact account of the matter is, that, until the Reformation, all lawful marriages were solemnized by a clergyman episcopally ordained, and all questions of marriage belonged to the ecclesiastical courts. Under the recollection of ecclesiastical oppression in England, ministers in Massachusetts were not authorized to solemnize marriages by the Colony laws. At length, in 1695, along with justices of the peace, the "ordained minister" might join persons in marriage, "in the town where he was settled; but one or both the parties must be inhabitants or residents of the town." [1]

In the main, these features are retained in the

[1] Milford *v.* Worcester, 7 Mass. 48. Before A. D. 1123, a clergyman might be married validly; yet the higher clergy objected until the Reformation. For English Marriage Laws, see Beamish *v.* Beamish, Ho. Lords. For American, see Am. Law Register, Jan. and Feb. 1864.

marriage laws now. The "marriage laws," will be found in the Appendix[1]. It will seen from § 14, which follows the Revised Statutes, that marriages may be solemnized by a justice of the peace, in the county for which he is appointed, when either of the parties resides in the same county. And by "any minister of the gospel, *ordained* according to the usage of his denomination, who resides within the State, and continues to perform the functions of his office." The apparent generality of the clause allowing ministers to marry "throughout the State," is qualified by the requirement that all marriages are to be solemnized in the city or town in which the person solemnizing them resides, "or in which one or both the parties to be married reside."

§ 2. Happily, ministers, under the general statutes of 1860, are relieved from anxious inquiries that used to be made about "public ministers," "ordained ministers," "settled ministers," and "stated ministers." Courts are not called to examine such questions as were decided in 1822, — whether a minister was sufficiently "stated and ordained" to entitle him to solemnize a marriage, who had been ordained according to the form observed in the Baptist churches, and had been afterwards engaged by *two* Baptist societies to preach to them alternately. Whether a Congregational minister, ordained in Connecticut, and "installed" over the *First* Parish in Granby, Massachusetts, could be called "a settled minister" (and thereby exempt from taxation), who, after a steady service of five

[1] Gen. St. ch. 106. Appendix F.

and twenty years in the town of Granby, on a division of the parish, accepted a call from the *West* Parish of Granby, but was not *installed* over said West Parish.[1]

The law in 1860, however, still retains certain distinctions and classifications of ministers: for example, it allows "any minister of the gospel" to attend a prisoner in his illness, and to be present at his execution, whom the prisoner desires; and it exempts "ministers of the gospel," in general, from military duty.[2] Only "settled ministers" are exempt from watch and ward, and from jury duty. And "resident ministers" only are expected by the law "to exert their influence, and use their best endeavors that the youth attend school."[3] Who is considered by the court a "settled minister," may be inferred from the Charlestown nunnery case, where a clergyman of the Methodist Episcopal Church, of the "local connection," preaching, when called upon by churches within a convenient distance from his residence, was deemed a "settled minister," exempt from jury duty. Also from the case of Bellingham, already cited in the chapter on ministers.[4]

§ 3. If we turn from the officers who may solemnize marriages in Massachusetts to the preliminaries and circumstances of the marriage contract, we shall

[1] Commonwealth *v.* Spooner, 1 Pick. 234; Gridley *v.* Clark, 2 Pick. 403. The exemption of ministers and college officers from taxes ceased by act of June 12, 1829.

[2] Gen. St. ch. 178, § 40; ch. 174, § 27; ch. 13, § 9.

[3] Gen. St. ch. 23, § 6; ch. 132, § 2; ch. 38, § 11.

[4] Commonwealth *v.* Buzzell, 16 Pick. 153; Bellingham *v.* Boylston, 4 Cush. 553.

find, in the language of Nathan Dane, that marriage "has been ever regulated, in Massachusetts, by statute law." The rudiments of the marriage law, along with other salutary laws, may be found in the following entry in the Massachusetts Records of Sept. 9, 1639, a long time before officers for solemnizing marriages were appointed: "No person shall be joined in marriage before the intention of the parties hath been three times published, at public lecture, or town meeting, in both the towns where the parties do ordinarily reside. If there is no lecture, then the same intention be set up upon some post standing in public view, for fourteen days." Soon after there follows an order, "that there be records kept of wills, days of marriage, and death of every person, and men's houses and lands. And that Mr. Stephen Winthrop be chosen to record things." [1]

In the statute of 1695 is a new feature, which has also retained its place along with "publishment." No persons are to be joined in marriage "without evident signification that the parents or guardians of males under twenty-one, and females under eighteen, were knowing of or *consenting* to such marriage, under the penalty of forfeiting fifty pounds to the county." [2] The laws of 1786 were more specific. Intentions were to be declared "at three public religious meetings, on

[1] 1 Mass. Records, 275. For the Thursday Lecture, where publishments used to be made, see 36 Examiner, 24

[2] 7 Wm. 3, ch. 6.

different days, at three days' distance, exclusively in the town where the parties respectively live; or have their intentions posted up fourteen days." For males under twenty-one and females under eighteen, the assent of parents or guardians, "if within the State, must be had."

The marriage laws, recast in 1834, and embodied in the Revised Statutes, retain the main features of the early law; allowing parties to enter their intentions fourteen days before marriage, or make a public proclamation at three public religious meetings on different days; said meetings not less than three days distance from each other. Under the Revised Statutes of 1836, the clerk or registrar was to furnish the certificate of publication for the parties; and the minister or magistrate in whose presence the marriage was to be contracted was to have the certificate of the clerk or registrar in his hands, before he solemnized the marriage.[1]

§ 4. Whatever changes were made in the law after 1836, in regard to publication and the clerk's certificate, appear in the General Statutes, ch. 106, cited in the Appendix. It would seem that one publication only is now necessary; that the decent interval of fourteen days between the publication and ceremony, required for more than two hundred years, is now dispensed with; and parties may have the ceremony performed before the ink is dry on the clerk's certificate of publication. It would seem also that there is now no forbidding of banns in the presence of the

[1] St. 1834, ch. 177, 183; Rev. St. ch. 75.

clerk; no trial of that issue. But the clerk (sec. 8) issues the certificate containing the facts "required by law to be ascertained and recorded, except those respecting the person by whom the marriage is to be solemnized." The complete list of facts "to be ascertained and recorded" is as follows: "The date of the marriage, the place, the name, residence, and official station of the person by whom married. The names of the parties, their places of birth, the residence of each, the age and color of each, the condition whether single or widowed, of each, the occupation, the names of the parents, and the date of the record." [1]

The clerk is liable, by sec. 9, to a penalty if he issues the certificate to males under twenty-one and females under eighteen, without the application or consent in writing of parents, master, or guardian, if in this State, and competent to act. Magistrates and ministers are also forbidden, in sec. 13, to solemnize a marriage of parties under twenty-one and eighteen without such consent. The magistrate or minister is forbidden, if he have "reasonable cause to suppose" either of the parties under the age required. The phraseology, "reasonable cause to suppose," requiring that the magistrate or minister at least inquire the age of parties, if he has doubts, after the clerk's certificate has been placed in his hands.

By sec. 16, the minister or magistrate celebrating the marriage keeps himself a record of the marriage, corresponding to the one above described; and he also, between the 1st and the 10th of each month,

[1] Gen. St. ch. 21, § 1.

sends a copy of his own record, for the month preceding, to the clerk or registrar, under a penalty. The theory of the statute is, that the married parties keep the certificate thus made out for them by the clerk and minister, as original proof of their marriage; while the minister makes his own record, and the town clerk his record, as additional proof of the marriage of the parties, to be resorted to as occasion may require.

Besides the penalties, sec. 16, for neglecting to make returns to the clerk, the party solemnizing the marriage is, by sec. 19, exposed to a penalty for joining persons in marriage contrary to the provisions of the whole chap. 106, "knowing that the marriage is not duly authorized." Under this guarded language, the officer or minister examining the clerk's certificate, and making reasonable inquiry, can hardly incur the penalty of marrying those who are prohibited from marrying by the first five sections of the statute. It may, however, be some relief to a conscientious minister or magistrate to know that he is not exposed to the various penalties under secs. 13, 16, and 19, unless suit is commenced within two years after the error has been committed.[1]

If the minister is not by nature a recorder, it may add to his diligence to know that section 21st of the marriage act makes him a certifying officer at the least, by allowing his record, "made and kept as prescribed by law," or a certified copy, presumptive

[1] General Statutes, ch. 155, sec. 21.

evidence of marriage, in all courts and places. It is owing to the neglect of ministers in performing the double duty of keeping their own record of marriages, and sending to the town clerk, monthly, a copy of such record, that so many widows of soldiers are obliged to rely upon the affidavits of third parties to prove their right to the widow's pension. On application to the minister and the town clerk, these widows find too often that neither town clerk nor minister has kept any record of marriages whatever.

§ 7. Questions as to marriages valid in Massachusetts, because validly celebrated in other states or countries, do not belong to this discussion; nor questions as to marriages valid, notwithstanding the penalty attached here to the officer or minister celebrating them improperly.

It may be of interest to parents and guardians to know that the age of consent of parties and of valid marriage, in this Commonwealth, is twelve for females and fourteen for males, as at common law.[1] To pursue the subject of minimums, the officer or minister officiating will remember that the decision of 1815, that "one not having sufficient understanding to be able to make a valid contract respecting property, or to deal with discretion in the common affairs of life, cannot contract marriage," has been softened in favor of our generation; and now the exclusion, section 5th, applies to "insane persons and idiots."[2] He may also remember that the marriage

[1] Parton *v.* Hervey, 1 Gray, 119.

[2] Middleborough *v.* Rochester, 12 Mass. 363.

"betwixte Englishe and Indeans," which exercised the General Court in 1634, and passed into a prohibition, was repealed in 1843; and now there is no prohibition relating to the color and race of the candidates.[1]

It may be of interest to know what is the minimum of *ceremony* required by law. In England, it was once held that a clergyman in orders, using the forms prescribed by the Prayer Book, might, without witnesses, perform the ceremony for himself. In Massachusetts, parties capable of contracting marriage were heretofore held not validly married, who went before a justice, provided with the proper certificate, declaring their intentions of marriage, the justice, however, declining to make a record, or take any official notice of the transaction.[2] The evil consequences that might flow from this decision, made in 1810, depriving the wife of dower, and her children of heritable blood, were cured by reasonable provisions in behalf of parties acting *bonâ fide*, contained in the Revised Statutes and the General Statutes of 1860. Considering how many are the chances that the clerk's entry or his certificate, or the minister's conduct, may be informal, very sad would be the results of too rigorous a marriage law.[3]

[1] For Legislative reasons for this change, see House Doc. 1841, No. 7.

[2] Beamish *v.* Beamish, Jurist, Nov. 1855. But this has been overruled in the Privy Council. Milford *v.* Worcester, 7 Mass. 48; Gen. St. ch. 106, § 20.

[3] For other topics connected with marriage, see ch. 17. § 9.

CHAPTER XV.

Penal Laws — Observance of the Lord's Day, Preamble, Decisions — Blasphemy, Kneeland's Case, Rights of Discussion — Atheists, their Exclusion, Thurston's Case.

§ 1. The penal and prohibitory laws which require notice are not numerous: they relate principally to judicial oaths, blasphemy, and the observance of the Lord's Day. Under the Colony Laws, "Parents and governors of children above seven years old," playing in the streets on the Lord's Day, were liable to be admonished; the General Court at the same time gave notice that they did not thereby "approve of younger children in evil." "All youths and maids above fourteen," were liable to personal admonition.[1] The provision in 1639, that all labor should "surcease" at three o'clock Saturday afternoon, accompanied as it was by "catechizing," could hardly be deemed an alleviation to these strictnesses. The spirit of the grave period following the Revolution is well expressed in the preamble of the statute, combining various acts for the observance of the Lord's Day, then extending from midnight of Saturday to sundown: "Whereas the observance of the Lord's Day is highly promotive of the welfare of a community, by affording necessary seasons

[1] Mass. Rec. 3. 316.

of relaxation from labor and the cares of business; for moral reflections and conversation on the duties of life, and the frequent errors of human conduct; for public and private worship of the Maker, Governor and Judge of the world, and for those acts of charity which support and adorn a Christian society; and whereas some thoughtless and irreligious persons, inattentive to the duties and benefits of the Lord's Day, profane the same by unnecessarily pursuing their worldly business and recreations on that day, to their own great damage as members of a Christian society, to the great disturbance of well disposed persons, and to the great damage of the community by producing dissipation of manners and immoralities of life," be it therefore enacted.[1] It is in laws of this class that we most feel the want of the ancient preamble. In our days of codification, revision, and compression, these preambles are all omitted; though they speak with a force and encouragement of their own to the heart of the loyal citizen, whatever may be said of the need of bald penalties for transgressors.[2]

Our statute for the observance of the Lord's Day contains the prohibition, under a penalty, of keeping open on the Lord's Day, now extending from midnight to midnight, the shop, warehouse, or workhouse; the doing any manner of labor, business, or work, except works of necessity or charity; very much as they are to be found in the Revised

[1] St. 1791, ch. 58.

[2] The proclamations for fasts and thanksgivings of the Continental Congress are highly commended, 6 Monthly Spectator, 34.

Statutes of 1836, and earlier laws. They prohibit, under a penalty, travelling on the Lord's Day, except from "necessity or charity." Also, the service or execution of any civil process under any circumstances. Specific penalties for being present at any dancing or public diversion, show, or entertainment, or taking any part in any firing of guns, fishing, fowling, sport, game, or play, on the Lord's Day, are provided in the statute. Sheriffs, grand jurors, and constables must inquire into and inform of all the above offences, and cause the law to be carried into effect.[1]

§ 2. These venerable laws, having deep foundations in the religious and civil nature of man, have received an enlightened construction by the Supreme Judicial Court. It was early decided that one carrying the mail, though he violated the State law, was not indictable, being protected by his contract with the United States; but the passengers in his stage are not thereby protected; nor the driver, "if he blew his horn to the disturbance of serious people, either at public worship or in their own houses," says Chief Justice Parsons.[2]

[1] See Appendix for Genl. St., ch. 84. Laws, 1865, ch. 253. A collection of the laws, 1814, may be found in the "Middlesex Convocation for suppressing Violations." Athenæum Pamphlets, ch. 161. Later efforts to promote the observance may be found, Mass. Genl. Ass'n, 1831, 1833. Am. Theo. Rev. 1862, 296. Repertory, 1863, 560.

[2] Commonwealth *v.* Knox. 6 Mass., 76. Calvin, commenting on Exodus xx. 10, says: "It was not lawful for judges to give a hearing to two litigants; but, if any one had violently assaulted his neighbor, it was allowable to prevent the injury, and give relief to the unoffending person." Harmony of Pentateuch, ii. 438. The question whether a

On the principle that a penalty annexed to an act by a statute implies a prohibition, and renders the act itself illegal, combined with the other principle, that the law will not assist one to recover who has to ground his action on a violation of law, it was held, that one travelling on the Lord's Day, not from "necessity or charity," cannot recover from a town damages incurred by reason of a defect in the highway; and the burden of proof is on the traveller to show the "necessity or charity" of his travels.[1] The Courts, construing the word "necessary," say we are not to understand a physical and absolute necessity, but a moral fitness or propriety of the work, under the circumstances of any particular case. And they held a town liable for an injury occurring on a Monday morning, through the town's failure to mend the road, or guard against the injury on Sunday, which was a necessary work, say the Court.[2] They have also very properly refused to allow one who has received payment on Sunday, to keep the money, and treat it in his defence as no payment.[3]

When the Lord's Day is violated by transactions that have not the excuse of "necessity or charity," the effects are quite positive and far reaching. This will be seen in the following cases: Two parties exchange horses on the Lord's Day; one deceives the

jury can render a verdict on Sunday is examined in the Law Reporter, 13, 541. As to judicial acts which are void, and ministerial acts which are valid, done on Sunday, see Johnson *v.* Day, 17 Pick. 109.

[1] Bosworth *v.* Swanzey, 10 Met. 363.

[2] Flagg *v.* Millbury, 4 Cush. 243.

[3] Johnson *v.* Willis, 7 Gray, 164.

other; the law abhors deceit, and often strains a point to rectify the injury; yet, as both parties are in *pari delictu* by a breach of the Lord's Day, no action lies.[1] On the Lord's Day, the owner of a horse knowingly lets him for a "pleasure drive," "to go to Chelsea," not for purposes of "necessity or charity;" the party driving the horse, beyond the limits for which he was hired, injures him so that he dies; the owner cannot recover for this loss, because, to make out his claim, he must show an illegal act on his own part, to wit, the letting.[2]

No action lies, for the same reason, upon a bond executed on the Lord's Day, not from "necessity or charity," though bearing the date of another day. Its execution is held to be "labor, business, or work." "The prohibition extends to all secular business, to the making of bargains, and all kinds of trafficking. Whether the defendant may be as much in fault as the plaintiff, is not a subject for inquiry." [3] On the same general principles, a guaranty for the fulfilment of a lease cannot be sued upon if made on the Lord's Day, not being a work of "necessity or charity," though the lease guaranteed is executed afterward on a week day.[4]

[1] Robeson *v.* French, 12 Met. 24.

[2] Gregg *v.* Wyman, 4 Cush. 322; Way *v.* Foster, 1 Allen, 408; Welch *v.* Wesson, 6 Gray, 505.

[3] Patee *v.* Greely, 13 Met. 284. A will is not a contract. See 1 Choate's Life and Writings, 135; Bennet *v.* Brooks, 9 Allen.

[4] Merriam *v.* Stearns, 10 Cush. 257. The various rules for pleading and proof in civil suits, and indictments for violating the Lord's Day, are suggested in Commonwealth *v.* Maxwell, 2 Pick. 139; Commonwealth *v.* Collins, 2 Cush. 556; Hill *v.* Dunham, 7 Gray, 543. Among the records at the State House may be found an indictment, in 1793,

§ 3. After guarding the Lord's Day so sacredly, that men might, "in public and private, worship the Maker, Governor, and Judge of the world," it is not to be presumed that intentional insults to the Majesty of Heaven would be lightly overlooked. Blasphemy, which comes eminently under the jurisdiction of ecclesiastical courts, was punished by the Colony laws with great rigor. Indians were held to have sufficient of the "light of nature" to make them amenable to statutes against blasphemy; and their "powwows" were strictly prohibited in the settlements as blasphemous.

Blasphemy is enumerated in the general statutes among offences against modesty and decency, following the act of 1782, which defines the crime with more than usual fulness and theological care, thus: "Whoever wilfully blasphemes the holy name of God, by denying, cursing, or contumeliously reproaching God, his creation, government, or final judging of the world, or by cursing or contumeliously reproaching Jesus Christ, or the Holy Ghost, or by cursing or contumeliously reproaching the holy word of God contained in the Holy Scriptures, or exposing them to contempt and ridicule, shall be punished by imprisonment in the State prison, not exceeding two years." [1]

of the Chief Justice and his associates for travelling on the Lord's Day, and their humble petition to the Legislature to authorize a *nolle prosequi*. See the instructive life of Governor Sullivan, by Thomas C. Amory, Esq., vol. i. p. 263.

[1] The Scriptures are enumerated St. 1782, beginning with Genesis and ending with the Apocalypse. General St. ch. 165, § 19. This

The constitutionality of this act against blasphemy was examined for the first time in 1838, by the Supreme Judicial Court, in the case of Abner Kneeland, on appeal from the Municipal Court of Boston.[1] Kneeland had been found guilty in the Municipal Court in 1834. The printed words for which he was indicted were: "The Universalists believe in a God which I do not; but believe that their God, with all his moral attributes, aside from nature itself, is nothing more than a chimera of their own imagination."[2] On appeal, in 1838, the Supreme Court say, such words as are "a denial of God, with a bad intent, and in a manner calculated to give just offence," are punishable by the statute, and the statute, as thus understood, is not contrary to the Declaration of Rights, article second: nor is the statute repugnant to the sixteenth article, which requires that the freedom of the press should not be restrained; this article being intended to allow of publication without previous license, not to restrain the indictment of obscene, profane, libellous, or malicious publications.

The Court paid no attention to Kneeland's avowal that he was no Atheist, but a Pantheist;

whole chapter 165, for substance, was required to be read by the town clerk solemnly, at each March meeting, annually. St. 1711. In this respect was imitated the laudable custom of reading the Articles of Confederation for the New England Colonies, at each meeting of the Delegates. See vols. ix. and x. Plymouth Records.

[1] Commonwealth *v.* Kneeland, 20 Pick. 206, 1838.

[2] The argument of his counsel, and the opinion of Judge Thacher, who tried the case, is contained in Thacher's Criminal Cases, 346.

nor to his distinctions, that the statute was intended to punish a "denial," not a "disbelief," of God; his expressions being those of a "disbeliever of the God of the Universalists," not a "denier of the God of the statute." Kneeland's claim in behalf of "Jews, Mahomedans, Gentoos, and Christians, that they might denounce and ridicule each the religion of the other in turn," did not secure the approval of the Court. The attorney general, intending to steer clear of all controversies, said, without much reference to Puritan theology, that the Legislature intended to denote by the word God, "the Supreme, Intelligent Being, alike revered by Christians, Jews, and Mahomedans, not the material universe."

The Court, without commenting on the theology of the statute, are evidently anxious throughout to save to all citizens the right of avowing their belief or disbelief on proper occasions; and especially the right to free theological discussion among the clergy. It was this anxiety that gave rise to Mr. Justice Morton's dissenting opinion in the case of Kneeland.[1] The right of free theological discussion, and to avow one's belief or disbelief, were guarded with equal care in a decision of 1811, in New York, where the defendant was indicted and found guilty at common law, without statute, for gross and blasphemous utterances against Jesus Christ. The grounds expressed by Chief Justice Kent are: We

[1] The topics of Kneeland's case are discussed by the Reviews. Blasphemy, 16 Examiner, 29; 17 do. 23; Free Discussion, Biblical Repertory, 1837, 368; Pantheism, Bib. Rep. 1842. English cases may be found, Law Mag. & Rev. viii. 247.

are a Christian people; "the morality of the country is deeply ingrafted on Christianity, not upon the doctrines or worship of such impostors as Mahomet or the Grand Lama; therefore such gross offences as blasphemy are punishable at common law." [1]

§ 4. It is not necessary to examine at length the rules which render, or used to render, a witness incompetent to testify in a court of justice, from disbelief. The scrutiny in courts of men's belief, its quantity, its quality, is necessarily limited; at most excluding those who do not believe in the existence of a God, and that he will reward or punish us, according to our deserts, in this world or the next. The attempts made to exclude Universalists, as in the case of Batchelder in 1829, have not been favored in Massachusetts.[2]

The exclusion of Atheists, in Thurston's case, in 1848, was objected to as an infringement of the constitution,[3] which provides that "no person shall be hurt, molested, or restrained in his person or estate, for worshipping God in the manner and season most agreeable to the dictates of his own conscience, or for his religious profession or sentiments." But, says Mr. Justice Wilde, "an Atheist is without any religion, true or false; the disbelief in the existence of any God is not a religious, but an anti-religious,

[1] People *v.* Ruggles, 8 Johnson, 290. Christianity a part of the Common Law of England. See 8 Spectator, 13; 11 Serg. & Rawle, 400; 8 Law Mag. & Rev. 247.

[2] Greenleaf Evidence, 1, § 368–372; Thurston *v.* Whitney, 2 Cush. 104; Thacher's Crim. Trials, 191.

[3] Part 1. art. 2.

sentiment; this clause of the constitution, therefore, has nothing to do with this case."

The presumption of law is strong, that all men are believers to the extent required by the law to qualify them to testify. To prove the contrary, third persons must be introduced; for the witness himself cannot be examined as to his disbelief; it would be an unauthorized scrutiny of his faith; besides the very objection presupposes that the witness is not qualified to be sworn. Where a witness, of whatever faith or denomination, is admitted to testify, his testimony cannot be disparaged on grounds merely denominational. The Court, in the Charlestown convent case, would not allow counsel to make comparisons undervaluing testimony on such grounds.[1]

But all these questions as to modes of swearing, and the quantity of belief necessary to make a witness competent, keenly discussed heretofore in civil and criminal cases, are much relieved by the General Statutes of 1860, by which "every person, not a believer in any religion, is required to testify truly, under the pains and penalties of perjury: and the evidence of such person's disbelief in the existence of God may be received to affect his credibility." This modification of the law of evidence is in harmony with the new rules admitting parties to testify: it has the merit of saving rights which third persons may have to testimony; and probably it will give less notoriety

[1] Commonwealth *v.* Buzzell, 16 Pick. 153. For Legislative Reports on the convent, see House Doc. No. 37, 1835; No. 22, 1841; No. 160, 1854. Stat. of 1839, ch. 54, and Gen. Stat. ch. 164, on riots, and town liabilities for them.

than was given under the old rule, excluding Atheists, to crude and vulgar Atheistic expressions in courts of justice.[1]

The religious character of a state is not always most apparent in her penal and prohibitory legislation. That of Massachusetts is better inferred from the general strain of her statutes, so encouraging to piety, benevolence, and good learning. In England, the Courts are prompt to say, that Christianity is a part of the common law. Judges in New York, Pennsylvania, and other States have made declarations nearly equivalent. If, in Massachusetts, learned judges have been less demonstrative in their encomiums on the Christian faith, the general strain of her judicial decisions, as well as her legislation, leave no doubt that Massachusetts ever has been a Christian Commonwealth.[2]

[1] Gen. Stat. ch. 131, § 12. On the admission of Atheists, see 15 Law Reporter, 301 ; 1 Chr. Review, 479 ; 1 Spectator, 438 ; also Appleton on Rules of Evidence.

[2] The progress made during the last one hundred years, in England, toward ecclesiastical, civil, and religious freedom can be traced in May's Constitutional History, vol. ii.

CHAPTER XVI.

Ecclesiastical Councils — Ipswich — Mr. Norton — Committee of Arrangements — The General Court.

§ 1. When our ancestors came to church councils, there was no slight task before them. With all their experience of papal Rome, the English hierarchy, and Scotch Presbyterianism, it is doubtful if they would have succeeded so well if they had not courageously followed the intimations of the New Testament in preference to later ecclesiastical models.

A *provincial* council is one called for a particular province; but prelates and doctors, says Burns, in his Ecclesiastical Law, "assembled from all parts of the earth, and gathered by commandment of princes, make an *ecumenical* Council."[1] Writers would be puzzled to classify the councils of our Puritan and Pilgrim Fathers, under any of the headings of this learned authority.

After the record that the Great and General Court of Massachusetts, sensible of the exigence of the country in respect of salt, in the year 1655, had appointed a committee to attend to the same at the Ship Tavern in Boston; immediately after this appointment, follows in the Colony Record the report of another committee on the case of the

[1] Vol. ii. p. 30.

churches of Ipswich and Boston, and the Rev. John Norton. Instead of prelates and doctors, appear Mr. Simon Bradstreet, Captain Humphrey Atherton, Mr. Richard Russell, and Captain Eliezer Fisher. This lay committee recommend that there be forthwith a council called by authority of the Great and General Court, not on ecclesiastical grounds, but because "they can think of no better expedient agreeable to the rule of Christ, to compose the breach and discord in Ipswich church, which Ipswich people are not able to compose themselves, nor have they sought advice from other churches." Preliminaries ended, sounding words of Latin might be expected, "*In cœna Domini*," to quell the rebellious and discontented. Instead of all that, the antiquarian reads that the Great and General Court modestly "order and desire the churches of Roxbury, Dorchester, Braintree, Dedham, Charlestown, Cambridge, Watertown, Sudbury, Salem, Lynn, Newbury, and Rowley, each to send two messengers to consider how Mr. Norton's way may be cleared, and the obstructions removed, and peace and quietness procured for the churches." All the prelates and doctors attending the council are commended by the Court to the hospitality of Mr. Robert Paine, of Ipswich. In less than a month, the treasurer is ordered to pay "Mr. Robert Paine's bill, 24 pounds, 17 shillings, 3 pence, for the expenses of the council meeting in Ipswich, out of the best he can to that valleu." [1]

We need be at no pains to classify this council

[1] Mass. Records, iv. 240.

of Ipswich. We may take it as a fair sample of the Christian moderation and discernment of the early settlers of Massachusetts; illustrating, at the same time, the connection between the courts of Massachusetts and the early ecclesiastical councils of the local churches. And here it may be well to give further details of the council of Ipswich; rather, the series of councils relating to the church of Ipswich, and the first church of Boston.[1]

§ 2. On the death of the Rev. John Cotton, their minister, one person, and one only, was thought of to take his place in the First Church of Boston, now the Unitarian Society in Chauncey Place. The candidate was consecrated by Mr. Cotton's seeing him in a vision, riding into Boston on a white horse. Evidently no hindrance from the church of Ipswich was anticipated; for the Great and General Court, as early as May, 1653, congratulated themselves by vote, "that the sad breach is soon to be made up by a comfortable supply, in that the Rev. John Norton of Ipswich, with the blessing of God on the endea-

[1] The New England Synods referred to, chapter 6, § 6, were the natural outgrowth of the famous European councils. The Council of Trent, terminating its session of eighteen years, A. D. 1563, the Synod of Dort, 1619, and the Westminster Assembly, 1648, came within the notice of the early Puritans. For their Symbols and Catechisms, see 12 Bib. Sac. 646; 2 Shedd's History of Doctrine. As to Trent, Am. Theo. Rev. iv. 583, and Repertory, 1834, 59, and Meth. Quarterly, 1857, 67. As to Westminster, Repertory, 1843, 561, 1849, 59; New Englander, Oct. 1846; Meth. Quar. 1848, 577; and 8 Chr. Rev. 570. As to Dort, 62 Examiner, i.; Repertory, 1832, 239. The Racovian, or early Unitarian symbols, are noticed, 50 Examiner, 202; Repertory, 1833, 180. For the Heidelberg Catechism, see 20 Bib. Sac. 670. The Apostle's Creed, Repertory, 1852, 602.

vors of the church in Boston and his own good liking, was among them." [1] The Court order the gov ernor and speaker of the deputies to express to Mr. Norton how thankful they are, and how much advantage they think will accrue to the church, the country, and himself, "if God shall proceed in moving him to proceed" with the church of Boston in their desires. At the end is a quiet allusion to the church of Ipswich, thanking them for their love and self-denial *thus far*. This was in 1653, in May. In October, 1654, we find Mr. Norton elected a fellow of Harvard, and styled, "Mr. Norton, who now is teacher at Boston." In 1655, however, it comes to be discovered that Mr. Norton never had been dismissed from Ipswich. It was very true the church in Ipswich, at the first, had refused point blank; but thereupon a mutual council had been called, which advised their consent. The church in Boston had understood itself to be at liberty to move, from the vote of the Ipswich church in February, 1652. A committee of the Boston church had gone to Ipswich "to expostulate" the vote of February, 1652. But nothing came of this "expostulating." A *second* council was called in November, 1653, at Boston. To the result of this second *council*, the church in Ipswich would neither assent nor dissent, being equally divided.

Such was the position of parties in Ipswich and Boston, when the committee, appointed by the General Court, in May, 1655, recommended the

[1] Mass. Records, iv. 132.

third council, described above. Mr. Norton's position, meanwhile, had become so awkward, that he threatened to leave Boston for England, if the parties did not come to an understanding.

Without pursuing the details, it may be said, that exercises like these in the neighborhood of Boston, extending over several years, were preparing the Great and General Court of Massachusetts to arrive at its ecclesiastical prime; meanwhile, the churches were establishing the guarded, wholesome supervision of doctrine and polity by means of local ecclesiastical councils, which has lasted to our own times. The troubles of Mr. Norton were hardly composed, when difficulties in regard to baptism and church membership, that agitated the Hartford church, were referred, by the General Court of Connecticut, to Massachusetts.[1] The Hartford difficulties were still unsettled, when the General Court, at the close of the year 1661, called together in general synod at Boston all the elders and messengers of the churches of New England, to consider who are the subjects of baptism, whether there should be a consociation of churches, and what should be the manner of it.[2]

§ 3. At the third Council of Ipswich, we notice the General Court requests the attendance of the Governor, Mr. Bradstreet, Mr. Russell, and Captain

[1] Trumbull, 310; Hubbard, 608; Lechford, 107. Baptism and church membership were among the causes for calling the synod of 1648, 2 Mass. Records, 154.

[2] The synodial strife, the half-way covenant, its treatises, and lost treatises, are examined, July, 1862, in the Congregational Quarterly.

Edward Johnson, "to prevent any inconvenience, and more particularly to impart the Court's desire and intentions, if need require."[1] In those days, the Committee of Arrangements, proceeding from the General Court, was a matter of course, as much so as our Committee on Religious Societies. We find this committee reporting to the General Court "their conceivings" about the church difficulties between Cambridge and those dwelling the other side of the river, now Dedham. And these "conceivings" of the committee are unanimously adopted by the Court, without further reference to a council.[2] Down to the time of our Revolution, many anxious questions, now referred to ecclesiastical councils, were promptly settled by this Committee of Arrangements from the General Court. Among them were questions from towns whose difficulties were chronic; breaking out into lawsuits fifty, sixty, and seventy years after; occupying weary pages in the reports of the Supreme Judicial Court. Besides the difficulties of Andover, already alluded to, Marlboro', in 1660, found difficulty in harmonizing with Mr. Brinsmaid, their minister. Easton had trouble with the Rev. Mr. Prentice, who refused to attend the new meeting-house in 1751; and Rehoboth had troubles as early as 1758.[3] The Legisla-

[1] Mass. Records, iv. 226.

[2] Mass. Rec. iv. 319.

[3] Mr. Prentiss adhered to Whitefield. For a sketch of his theological and personal troubles in 1744, at Grafton, see Congregational Quarterly, July, 1862. Rehoboth troubles seem to have outlasted the French War, the Revolution, and the War of 1812. In 1795, we have Mr. Ellis's pamphlet in regard to disturbances arising under the act

ture was well called the Great and General Court; for it embraced all possible jurisdiction, — political, civil, ecclesiastical, military, naval, and criminal, — a mass of powers, which was at length distributed among various courts and officers; a very modest remnant of the ecclesiastical jurisdiction falling to the Supreme Judicial Court on appeal, the rest being left, where it properly belongs, to the local churches.[1]

of 1792, which appointed a committee of seventy-one persons to manage the ministerial fund of Rehoboth, and protect it from the precinct, giving rise to two lawsuits. Our reports, as late as 1825, furnish more than two suits on this same topic. Feb. 11, 1864, we notice that the House has passed a bill in behalf of the First Precinct of Rehoboth.

[1] The General Assemblies of the Presbyterian Church, meeting annually, are not unlike our antiquated Great and General Court of Colonial times. For their complex, ever-recurring topics of spiritual, legal, ecclesiastical, executive, and judicial jurisdiction, see Acts, Deliverances, and Testimony of the Supreme Judicatory of the Presbyterian Church, from 1706 to 1856, by Mr. Baird, pp. 856; do. do. from 1706 to 1860, by Mr. Moore, pp. 633.

CHAPTER XVII.

Councils, continued — Mutual, Ex parte — Notice — Thompson *v.* Rehoboth — Impartiality — Reading — The Offer — The Protest — Accepting — Burr *v.* Sandwich — The Questions examined — The Evidence

§ 1. In the majority of cases, Massachusetts ecclesiastical councils have been convened in order to express the mutual fellowship that exists among the Congregational churches; to aid in the founding of new churches, and the settling of ministers; in general, to extend the preaching of the gospel. Along with ministerial associations, state and county conferences (which claim no ecclesiastical power whatever), the aim of the ecclesiastical council, in the great majority of cases, has been to promote harmony and activity among Christian men, in regard to vital Christian objects.[1] It is very rare that questions of such difficulty have been presented, that parties dissatisfied with the result of an ecclesiastical council have thought best to appeal to the law courts for redress.

In the eight or ten cases of appeal reported since 1800, most of them due to our peculiar parish laws, and argued prior to 1835, the Court has laid down

[1] The Boston Review, vol. v. 327, distinguishes happily the Congregationalists from the Independents, on the ground of the mutual Christian fellowship expressed by councils, to which the Congregational churches are addicted.

several rules, which still bind themselves and their suitors, whether the question under discussion is one of doctrine, conduct, salary, or settlement. And it is not amiss to understand these rules, if we would measure with accuracy the relief that can be obtained from the Supreme Judicial Court of Massachusetts on appeal from the result of an ecclesiastical council. A statement of these rules will occupy this chapter.

§ 2. Among the first rules, is the one derived from the courts of common law, — that a party, before being called on to engage in a council, is entitled to *notice:* "a general statement, at least, of the reasons and grounds for calling on him at all to join in a council. It need not be in precise and technical language, but he should have substantially set forth," says Chief Justice Parker, "the charges, that he may exercise his judgment upon them. For if the charges are frivolous, he is not obliged to submit them to a council: if serious and weighty, he should have the opportunity to relinquish his office, without the inquiry." [1]

§ 3. The relation of the minister to the people, the courts regard as a *permanent* relation; to be dissolved by mutual consent, by a mutual council, or by an *ex parte* council, where minister and people cannot agree upon a mutual council; and that the

[1] The strictness of statement required by English statutes is illustrated, Heath *v.* Burder, 1860, 2 Privy Council, 670.

The right of a party to a written statement of charges, so plain in our day, was quite overlooked in the great Salem Council, 1734, in the case of Mr. Fisk. In the Eastham Council, 1720, Mrs. Doane's offer, on Saturday afternoon, of a council, twenty miles from Eastham, to meet at her house on Tuesday, was considered short notice.

minister is entitled to his salary until his relation is thus dissolved.[1]

In haste to get rid of a minister who is not acceptable, parties sometimes omit to offer a mutual council; or, under the impression that one has been already offered, an *ex parte* council is called, and the parties find, when they reach the Supreme Court, that the work has all to be done over from the beginning. This case of Thompson *v.* Rehoboth illustrates the strictness with which Courts enforce *their next rule, to wit: that ministers must be offered a mutual council before an ex parte council is resorted to.* Mr. Thompson, by a majority of the religious society

[1] Ch. 7, § 6. Thompson *v.* Rehoboth, 7 Pick, 163. In this connection, Whitmore *v.* Fourth Congregational Society, Plymouth, 2 Gray, 306. The Bolton council, in case of Rev. Mr. Goff, held these doctrines in 1773; also, that male members of the church vote as to his dismission. Hist. Soc'y.

This doctrine is not peculiar to Massachusetts. In New York, it is held that a regular ecclesiastical council (or its equivalent) is a necessary preliminary to the termination of the ministerial relation. Diffendorf *v.* Trustees Reformed Ch., 20 Johns. 12, 1810.

Ministers, elders, and deacons of the Reformed Protestant Dutch Church in the city of Albany *v.* Bradford, 8 Cowen, 457, 1826, showing the process of removal in the Dutch Church, through the consistory, clasis, particular synod, general synod, supreme court, and court of errors, — occupying six years, where the question of "common fame as a drunkard" was re-argued not less than six times, S. P. Den. *v.* Bolton, 7 Halstead, 206. For strictures on the arguing and re-arguing of questions, and the whole judicial system of the Presbyterian Church, see Repertory, 1832, 28; 1835, 179; 1857, 493, 497. For the grades in Quaker ecclesiastical courts,—the particular, the preparative, monthly, quarterly, and yearly meetings, — see Hendricks *v.* Decow, 1 Saxton, 577, 1832; Dexter *v.* Gardner, 7 Allen, 243, 1863. The Methodist Episcopal Church has its quarterly, annual, and general conferences, all appellate courts controlled by the clergy, Porter's Compendium, ch. 7, Guild *v.* Richards, 16 Gray, 1860.

and a minority of the church, was dismissed from the church of Rehoboth on the 9th September. On the 19th, the minority of the church request him, in writing, to join in a mutual council; on the 20th, Mr. Thompson declines. The minority of the church then call an *ex parte* council, who give their result on the 12th October, advising Mr. Thompson to agree to call a mutual council.

Within two weeks, October 25th, the society again vote to dismiss Mr. Thompson, and call a council. In the mean time, however (on the 17th October), Mr. Thompson, in writing, had declined a request, made by three members of his church, to call a mutual council; the society, hearing of this, and taking it for granted that he would again decline, proceeded (without making him any offer in writing,) to call an *ex parte* council. This *ex parte* council met on the 1st November, stated in their result that a mutual council had been sufficiently offered to Mr. Thompson, and advised his dismission. But the Supreme Judicial Court held otherwise. Mr. Thompson's declining (say the Court), in the manner he did, the offer of a mutual council, made by the church September 20th, and again on the 17th October, did not authorize the society, on the 25th October, to infer that he would decline again if it were offered him; and the offer of a mutual council should have been made by the society before proceeding to the *ex parte* council.

The basis of the Court's decision in this case was in accordance with Congregational usages, that there can be no standing council; but a council, mutual or

ex parte, having once given its result, is *functus officio*, and all notices and proceedings expire with it.[1]

§ 4. When Thompson *v.* Rehoboth came next before the Court, there was a design on the part of minister and people to be regular in all respects, especially in the matter of notice. The offer of a mutual council is made by a committee of the society to Mr. Thompson on the 14th day of June. Promptly (on the 15th) Mr. Thompson replies, that it is impossible to say whether he can join in the council until he has a categorical answer from the society to two long, argumentative questions; when those answers are received, he will be happy to do so. The Court held the offer in this second instance sufficient, and that Mr. Thompson had *unreasonably refused to join in calling the council;* the result, however, of this second *ex parte* council, held on the 26th June, they set aside in Thompson's favor, on other grounds.

Mr. Thompson published a pamphlet vindicating himself, with all the minuteness of logic peculiar to council pamphlets.[2] For reasons pertain-

[1] Thompson *v.* Rehoboth, 5 Pick. 471, 1827. For protests against standing councils, however composed, see John Wise's Church Quarrel Espoused, 1710. Also, Breck's case, Springfield, 1736; Prest. Edwards, 1750.

[2] Dr. Abiel Abbott, in his pamphlet containing strictures on the first church of Coventry, Conn., in 1811, insisted that a consociation was no substitute for a mutual council. The proceedings of this consociation are revised by Dr. Thayer of Lancaster and others, proceeding as a council from Massachusetts. The same principle is maintained in 1816 by the Rev. Luther Wilson, in his strictures on the proceeding of a council at Brooklyn, Conn., condemning his erroneous views.

ing to his personal and theological position, his brethren in Reading afterwards put Mr. Thompson in a position somewhat conspicuous in the annals of councils. In 1834, he was summoned to Reading, with his Hopkinsian brethren from Seekonk, Attleboro' and Wrentham, ostensibly to inquire whether a member of the Reading church had said of his pastor that he was "a darn'd rascal," and of one of the sisters of the church that she was "as ugly as the devil;" but really to revise the proceedings of Council No. 1, held in Reading, of which Dr. Woods, Dr. Edwards, and Mr. Badger, of Andover, were members. At Reading, as moderator of Council No. 2, Mr. Thompson's skill was employed to overturn the structure erected so carefully in 1832 in favor of peace and quietness; assisting thereby to make Reading, in the north of Massachusetts, as renowned as Rehoboth in the south.[1]

§ 5. It is not always plain whose duty it is to take the first step in calling a council. In the Camden case, where the minister was supposed by the town to be dismissed, after they had given him six months' notice to quit, the Court held it to be the misfortune of the town, not the fault of the minister, that he remained nearly two years longer than they wanted him. "It was the business of the town, not of the minister, to call the council; and the

[1] Albeit Essex is the very first county for councils, the amateur in council pamphlets rather betakes himself to the Eastham and Middleboro' councils for instruction. There he sees the points more distinctly; they are contests waged, so to speak, before the use of gunpowder.

minister could not be blamed for not taking the first step."[1]

We do not find that a minister waives his rights, by sending a protest in writing, or appearing personally and denying the jurisdiction of the council. The Court will not take advantage of words in this connection, however complimentary to the council. At Rehoboth, Camden, Easton, Sandwich, and other places, protests have been made without prejudice to the rights of parties.

The maxims to be thus far drawn, are, that a mutual council, in case of disagreement, is first to be fairly and fully offered, by the party whose duty it is to make the offer; which offer is to be fairly and fully declined, or virtually declined, before an *ex parte* council can be resorted to. It is to be borne in mind, that councils die a natural death when they give their result; and everything in the nature of proceedings dies with the result. If a second council, therefore, is to be called, all the ceremonies of offering, accepting, and declining, are to be gone through with again, as if they had never been touched. It will be remembered, that there are councils "for advice, in difficult circumstances," neither mutual nor *ex parte*. There are also "collections of gentlemen providentially met together," which are not councils.[2]

[1] Cochran *v.* Camden, 15 Mass. 304.

[2] Howard St., Salem, 1830; Eastham, 1720; Old South Library, 1112, 861. All the known species of councils, and the rare perplexity of their doings, in 1802, at Fitchburg, may be seen in the Life of Dr. Samuel Worcester, vol. i.

§ 6. The party requested to join in calling a council is required to make a prompt answer, and a categorical one: otherwise, the other party will be authorized to call an *ex parte* council. The case of Burr *v.* Sandwich illustrates this rule at large, seeming to sanction more than the speed and categoricalness usual in the agricultural districts of those days. On the 18th of July, 1811, it was voted at town meeting, in Sandwich, to dismiss Mr. Burr: the same day, a committee of the parish notified him, and proposed that the connection be dissolved without a council, but Mr. Burr objected. On the 25th of July, they requested him to engage in a mutual council. On the 31st of July, Mr. Burr replies, that his church had unanimously disapproved his joining in a mutual council, but personally he had no objections. The next day, the committee call for a categorical answer, in writing, to their offer. Mr. Burr replies that he does not feel at liberty to engage in the mutual council without the consent of the church. On the 13th of August, an *ex parte* council is called by the parish, who dismiss Mr. Burr. This *ex parte* council is held by the Court to be properly called; that the matter was not hurried through too fast; and that Mr. Burr (if he was willing all along, as he said he was, to have a mutual council) should have joined the parish in calling a council; that his church objected was no reasonable excuse, in the eye of the law, for not joining in the call of the council.[1]

[1] In the case of Dr. Holmes, of Cambridge, dismissed by an *ex parte* council, the church insisted that they had not declined the offer of a mutual council. 2 Spirit Pilgrims, 559.

§ 7. The style or title of an ecclesiastical council, when addressed by laymen, is, "The Venerable Council." The remarks of Courts are always complimentary towards them. In this Sandwich case, Chief Justice Parsons takes evident satisfaction in quoting from Mr. Burr's letter of August 13th, the day the council was held, "his intention to meet them, not because he recognizes their jurisdiction, but for the respect he entertains for them as Christians, as gentlemen of integrity and discernment, and as lovers of peace and good order, whose advice would be calculated to allay the turbulent feeling of the parish." The Chief Justice quotes this to show that the duty of those calling an *ex parte* council, to select men who are not partial, prejudiced, or unfriendly to the opposite party, had been discharged in this instance.

Each party is supposed to look after his own interests; and the Courts will not scrutinize very closely the materials of a mutual council; actual partiality must be proved. But in *ex parte* councils the Court have set aside results that they would willingly have enforced on a suggestion of a possible unfairness. In the Rehoboth second trial, this was done, because three of the five ministers, composing this *ex parte* council, had sat on the first *ex parte* council, which had come to an unfavorable result. "Without doubt," say the Court, "these gentlemen believe they could act with impartiality towards Mr. Thompson; but the laws look to the common principles of mankind, not extraordinary instances of magnanimity, which may enable some few to rise

above the common feelings and prejudices of their race." [1]

While the Court set aside this peculiar result for good reasons, it is to be noticed that the members of an *ex parte* council are not, by the usage of the churches, expected to know nothing of the circumstances before they attend. There are many considerations removing the member of such a council from the position of a juryman. Such member is rather a combination of judge, jury, and advocate; or better still, without attempting any analogy or combination, he is a Christian adviser; and therefore the more correct knowledge of the case he has, before he comes to the *ex parte* council, the better.[2]

With these qualifications, suggested by the nature of the tribunal, Chief Justice Parker's application of a common-law rule is not unreasonable. We often see judges retiring from the bench, because they have been of counsel, or they are related to the parties, or have an interest in the subject-matter of the suit.

§ 8. The limitations to be given to the legal rules, requiring at least a show of impartiality,

[1] Thompson *v.* Rehoboth, 7 Pick. 165. Charges against a minister of the Episcopal denomination are laid in writing before the standing committee of the diocese. If the committee judge best, they submit them to the bishop. The bishop appoints nine ministers of the diocese, from whom the accused selects five; and these five are his triers. Convention, 1846; do. 1852.

[2] In the Rev. John Barnard's Narrative, 1727, are very shrewd remarks on the importance of calling neighbors, who know the parties and their ways. Also on curing the misconceptions of good men. Historical Society, 3d series, v. 228.

on the part of members of a council, together with sufficient and fair notice to parties in all stages of ecclesiastical proceedings, are well enforced in the proceedings of Council No. 5, held at Reading, in June, 1847.[1] The Reading case, in none of its roots or branches, came before the Court; but in the Reading pamphlet will be found an exposition, at least semi-judicial, of the law pertaining to councils. The minister of Reading survived the opprobrium of being called "a darned rascal," in 1834. All parties being vindicated by Council No. 2, proceeded, quietly, for nearly ten years, without a council. In 1843, twenty-three church members wrote the pastor a respectful letter, requesting him to resign. The troubles arising from these twenty-three dissatisfied members were the occasion of calling Council No. 3, to inquire if the members had expressed their dissatisfaction scripturally; which gave both parties good advice, which neither accepted. Council No. 4 met in April, 1847 (it was rather an adjournment of Council No. 3, for more than a year), and declared they had no new advice to give. Here was an emergency. The minister could have no peace so long as the twenty-three dissatisfied members remained; and the twenty-three could take no comfort so long as their minister sat in the gate of the sanctuary.

At length, after four years' delay, the minister rid

[1] See Reading Council, Pamphlet, 1847; New Englander, Oct. 1847; "Vindex," published 1848, by Crosby & Nichols.

See other authorities collected in Cummings' Congregational Dictionary, "Councils."

himself of the twenty-three by excommunication; whereupon an *ex parte* council, No. 5, was called, composed of thirteen ministers and twelve laymen, who pronounced it to be good sense and good congregational usage that members, individually or collectively, have a natural right to dislike a minister, and tell him so; and, provided all things are done in a Christian manner, they may attempt, by proper means, to remove him. Such proceedings are not to be viewed as offences worthy of discipline, much less excommunication.[1]

With great distinctness, the council further say, that proceeding to excommunicate, in a body, twenty-three persons, four years after such a slight offence; denying them any vote at all on the preliminary proceedings; giving those residing in the town short, verbal, indefinite notice, and those at a distance notice by letters (which did not reach them till after the excommunication had been pronounced, and they had been declared heathen men and publicans); such proceedings are characterized as arbitrary, unreasonable, and very far from Congregational.[2]

The fifth Reading Council farther say, that there are no rights appertaining to ministers who refuse properly to discharge the duties of moderator. They have no authority, as ministers, to retain

[1] For the excision of eleven ministers and twenty-five members at Baltimore in 1824, for "inveighing against the discipline of the Methodist Episcopal Church," and the formation thereupon of the Methodist Protestant Church, see Bang's History of Methodism, iii. 394.

[2] The right of a party under censure to a separate trial is urged, New Englander, 1847, 570.

the chair at the church meeting when requested to leave it. But that church meetings must be conducted with a full regard to the common rights of men assembled for religious purposes.[1]

The offence of "lording it over the heritage," indicated in these proceedings at Reading, though rare in our day, was not uncommon in the early times. In 1773, we find that Mr. Bowman, of Dorchester, not only preached "short sermons and old ones," but "refused to put the vote as moderator of the church meeting;" for which he was sharply rebuked by the venerable council. The ministers of Princeton, of Sterling, and of Boylston, in 1774, Tory in politics, were *dismissed* for claiming a veto power over the church.[2]

§ 9. Thus much for notice and all preliminary matters. When the council is invited, there is no power to compel them to convene; and, when the council is convened, there is no power to compel them to act.[3] The Supreme Court has never

[1] The necessary business rules of churches and councils, derived from Cushing's Manual, are well stated in Dexter's Congregationalism, 172.

[2] Episcopalian embarrassments from disloyalty are illustrated in the case of King's Chapel, when forty of the sixty-six pewholders, with the rector, fled in 1775, Church Review, vi. 85. Prevoost *v.* Seabury, 14; 668. The Court denied in 1786, in the case of Hawes *v.* Mann, 5 Mass. His. Soc., 3d Series, 51, this veto power to the minister, whatever encouragement the platform or John Wise may have given it. Dr. Bancroft's Half Century Discourse, 20 Examiner, 240. See in this connection, as to the duties of presiding officers, the Murdock cases, 7 & 12 Pick; also Earle *v.* Wood, 8 Cush. 430; also the Presbyterian cases, Com. *v.* Green, 4 Wharton, 531; and Treas. *v.* Sturgeon, 9 Barr. 321, 1848.

[3] Cochran *v.* Camden, 15 Mass. 301. For peculiar embarrassments introductory to the trial of bishops of the Episcopal denomination,

claimed, or had occasion to exercise, the compulsory power of *mandamus* over a minister, or any collection of ministers, assembled in council. They compel by *mandamus*, *certiorari*, *habeas corpus*, *quo warranto*, writ of error, and other legal process, officers, courts, and corporations; but they have no occasion to use such power in regard to councils as the King's Bench in England has exercised over the Archbishop of Canterbury, compelling him to hear and decide a cause.[1]

The council, mutual or *ex parte*, being fairly chosen and convened, may examine into any matters that are brought before them by the minister or the people. It has been decided in several cases that they are not confined to theological subjects.[2] In Avery *v.* Tyringham, it is laid down by Chief Justice Parsons, broadly, that councils are established to decide "in all cases of difficulty and controversy between a minister and his people."[3]

see Doane, Church Review, xiv. 126. Ives do. vi. 58. English bishops cannot be tried, it would seem (Colenso).

[1] A writer in the Law Reporter, vol. xviii. p. 421, argues that *mandamus* might be employed to compel the Episcopal bishop to restore a presbyter. There is a "scandalous contempt" held in reserve for offenders against the consociational plan of Connecticut; and a tone of *mandamus* is in common use by the General Assembly of the Presbyterian Church. Repertory, 1838, 475. For *mandamus*, under the Methodist Polity in New York, compelling a society to accept a minister, see People *v.* Steele, 2 Barbour, 397, 1848.

[2] Hollis Street Church *v.* Pierpont, 7 Met. 490.

[3] In colonial times, the structure and doings of an ecclesiastical council engaged, as warmly if not as profitably, the talent now expended on State Rights and other civil topics. 1 Turnbull's Cont. 310. Council pamphlets, before the Revolution, show that the people held their ministers to an account. These are some of the charges: "Light behavior;" "Not preaching the doctrines of Grace;" "Denying the

By Ch. Justice Parker, "that imprudence, censoriousness, and other immoralities, which would not, *per se*, work a forfeiture of office, are exceedingly proper to be submitted to a council."[1] And Mr. Justice Wilde[2] says, "It is nowhere intimated that parties are restricted, in any respect, in submitting any difficulty between them." In Mr. Pierpont's case, one of the principal points was, had the pastor written a prologue for a theatre, and if so, had he prevaricated about it. Indeed, all questions, from the gravest in theology to the lightest in minor morals and manners, have passed under examination in these tribunals, — at one time presenting a foreshadowing of the solemn scenes of the general judgment; at another, bearing a strong resemblance to those social tribunals where judges sit with cups of tea in hand.

President Edwards, in 1750, was dismissed by a council, because he refused to admit to the communion of the church in Northampton those who did not, by their life and conduct, show that they had been converted, — a question at the threshold of all church integrity and purity.[3] On the other hand,

inspiration of passages of Scripture;" "Not preaching the perseverance of saints." Salem Council, 1733; Breck, Springfield, 1736; Newbury, 1767; Dorchester, 1773; Bradford, 1744; Framingham, 1745. See, also, the controversial pamphlets, 1730 to 1765, Cleveland, Mayhew, Croswell, Col. Choate. To some settled ministers, the itinerant habits of Whitefield were no more prepossessing than his doctrines. 2 Spectator, 331; N. Englander, 1853, 195; 43 Examiner, 374; 44 do., 367. A good specimen of a doctrinal council, in 1781, may be found in the Congregational Quarterly for July, 1861.

[1] Thompson *v.* Rehoboth, 5 Pick. 499.

[2] Hollis *v.* Pierpont, 7 Met. 499.

[3] Athenæum Pamphlets, B. 24, N. Englander, April, 1846.

the disciples of President Edwards, Dr. Beliamy, Dr. Hopkins, and Dr. West, in 1779, were all involved in a series of councils at Stockbridge, which had for their object to inquire whether Mrs. Lavina Dean, widow, was properly suspended from the church for proceeding to marry Captain Fiske, after she was warned by the church that he was not a suitable person for a church-member to marry; which warning, however, she heeded not, so much had the Captain already entangled her affections. Captain Fiske and his wife looked on, while council after council of these venerable men narrowly examined the swarm of domestic, public, and ecclesiastical questions involved in this case, which they were at last unable to solve. All Western Massachusetts and Connecticut, meantime, were in a blaze of excitement at this invasion of the sovereign rights of women, to marry whomsoever they choose.[1]

[1] Athenæum Pamphlets, B. 80, 251, C. 32. For unsettled matrimonial topics, see McQueen's case, Repertory, 1843, 457; Bib. Repository, 1843, 188; Malcom on Marriage, 16 Examiner, 52; 10 Spectator, 104.

Circumstances indicate that the fair sex were not entirely understood in 1723. In the Eastham case, the church "wondered" that fourteen women, along with three men, objected to "Mr. Osborn's gifts." They could not understand the "backwardness of the women to give their reasons," publicly, in church meeting, after the church had refused Mr. Stone, their spokesman, permission to speak in their behalf; allowing Medad Woods, however, to give his wife a sharp rebuke in their presence.

The issue of the Eastham Council is characteristic and honorable to the fair sex. Of the remonstrants, the three males yielded at once; next, all the women except Mrs. Doane. She, a feeble woman "with a sore leg," vindicated, to the end, her right to be heard; a valuable right, which had been maintained at Weymouth in 1635, says Governor Winthrop, "by a woman of distempered speech." Old South Library 681; 1 Winthrop Journal, 338.

§ 10. There is nothing to show that councils were ever, like the courts of law, held to the strict rules of testimony. For example, in councils, the best kind of testimony need not be produced, or its absence accounted for, before secondary evidence can be offered. Parties in interest are not excluded, on account of bias, from giving their testimony; husband and wife are not prevented from testifying for or against each other. Hearsay evidence is not excluded. But everything is admissible that the council choose to admit, that will help them come to an understanding of the case. The Supreme Court has never qualified this license of proof, or been called to qualify it. The peculiar questions submitted to a council; the object of the examination, which is not always to vindicate any one's character, or convict any one of wrong doing; the want of power in the council to compel the attendance or testimony of witnesses; and all other considerations point to the necessity of admitting the largest liberty in the quantity and quality of the evidence introduced.[1]

The occasional complexity and boundlessness of ecclesiastical council questions is well indicated in the ancient Ipswich case, and suggests a like margin as to the proof. The council "having informed themselves of all proceedings and transactions (says the letter missive of the General Court) of the churches of Ipswich and Boston, in reference to Mr. Norton's settling in Boston, in way of office, or so much as may beget a right understanding of the whole case or cause of obstruction, they may, if they

[1] The witnesses in Mr. Pierpont's case, 1840, 114, were sworn.

please, first endeavor, by arguments and Christian advice, to persuade each church and party to do their duty; or otherwise (according to the order and power of a council to declare the mind of Christ), what is further to be done by the churches of Ipswich and Boston (or Mr. Norton), in reference to his settling at Boston, or returning to his charge at Ipswich." These are still the bounds, if bounds they may be called, recognized by the courts in examining these peculiar cases; founded on the imperishable right of everybody in Massachusetts to liberate his soul in questions spiritual. The exercise of it brought a lasting peace in the Ipswich case, and will do so hereafter, until the Massachusetts man changes the ecclesiastical ingredients of his nature.[1]

[1] As early as April, 4, 1819, Old South voted to attend no councils of Unitarian ministers. The General Association, 1823, recommend ministers "not to attend *ex parte* councils, without much deliberation and obvious and urgent necessity."

For suggestions that the letter missive contain the specific questions that are to come before the council, and that the names of all churches joining in the council be stated in the letter, see 6 Christian Review, 246. The difficulty of making a simple issue, and confining a council to it, is illustrated in Mr. Pierpont's case.

Judging from the case of Dr. M'Pheters, contained in the Presbyterian of June 25, 1864, multifarious issues are not unknown in the Presbyterian courts.

CHAPTER XVIII.

Councils continued — The Result — Modes of receiving — President Edwards — Results, when binding — Stearns *v.* Bedford — Hollis Street — Result accepted by one Party.

§ 1. The conclusion to which a council comes, by means of testimony or without testimony, upon the questions before them, multifarious or single, is called their *result*, which may be simple or compound, direct or qualified, as the case in hand requires. In discrimination, sound sense, and Christian moderation, these results, gathered from periodicals and pamphlets, compare favorably with acts of church dignitaries, ancient and modern. And they seem to follow, by Christian instinct, the best precedents of the high ecclesiastical tribunals.

Since the repeal of the statute *de hæretico comburendo*, which dates from 1677 in England, the usage of the more important supervisory bodies has been to condemn, in their results, first, the error; next, the accused, "provided he holds the error." This was the course adopted in 1699, by the Pope, in the great case of Bossuet *v.* Fenelon, when the errors of the Perfectionists and Quietists were condemned, in thirty-seven articles; and Fenelon was then condemned, provided these errors were contained in his works. So, in Wilson *v.* Beecher, and Junkin *v.* Barnes, in their trials before the courts of the Pres-

byterian Church, in 1836. So, also, in Atwater *v.* Bushnell, in the General Association of the State of Connecticut, in the year 1853.[1] The simple ecclesiastical councils of Massachusetts, guided by instinct or precedent, pursue nearly the same course. In 1863, in a council at Georgetown, they first condemn the statements that the soul of man apostatized in a preëxistent state; that offers of salvation are made after this life; that Christ's sufferings are suasory and argumentative, rather than vicarious; and the minister is next condemned, "provided these errors are contained in his sermons."[2]

The result of an ecclesiastical council, whatever may be the matter before them, should be expressed in writing, clearly and distinctly, and in an orderly way. To this result a right-minded man, minister or layman, is inclined to defer, if reached impartially, And it is a proof of the prevalence of Christian sense and temper, that so many results are deferred to without hesitation or appeal to public opinion. President Edwards found little impartiality in the mutual council that dismissed him from Northampton by a majority of one, many of whose members had prejudged his case, and most of them were his theological opponents (all belonged to his own ministerial association); yet he respected their deci-

[1] Repertory, 1853, 189; do., 1853, 598.

[2] See Boston Recorder, July 4, 1863. Also Congregationalist, Traveller, and 75 Examiner, 387, for strictures on the result.

The errors of Rev. Theodore Parker are discussed, 36 Examiner, 408; and the inability of the Unitarian churches to deal with them, is maintained, 54 Examiner, 313.

sion, and went into the wilderness with a small salary, a large family, and no hope of an advantageous settlement.[1]

§ 2. A chapter would hardly describe the various moods in which results of councils were formerly received. Mrs. Doane says of her opponents at Eastham, in 1720, "Thus it may be seen how they have dealt with me; and, when they could not prevent a council taking notice of the matter, even trample on the council." In the case of the New North, 1720, the general strain of vindication adopted by "the aggrieved" is so happily expressed, that it may serve as a formula: "This declaration is drawn up to manifest our innocency of and freeness from guilt against the hard, wrong, and unjust thoughts that many (we are apt to think) harbor and indulge against us."

That in some instances Christian sense and temper have not been displayed until the end of a second or third council, does not impair the commendation justly due to councils; nor that parties, at a loss how to act, have occasionally consulted public opinion, or appealed to the Supreme Judicial Court.[2]

[1] Athenæum pamplets, B. 24; Pamphlets of Messrs. Hobby and Breck, Hist. Soc. Under the rule of the Hampshire Association, adopted in 1714, the council must consist of members of the association. There was danger of arrest if a member attended out of the bounds of his association.

[2] The Ipswich council, 1805, resent the publication of an anonymous, partial review of their results, made by one of the parties. In the Eastham case, it was advised that no pamphlets be printed. Aliter in Mr. Pierpont's case.

That canons, however formal, will not secure respect to the results of councils, or prevent appeals to the public, see the cases of bishops

It was a fine tribute to this sure acting of common sense and Christian reason, in the long run, which the First Church in Boston paid, when they went to the church in Ipswich, expostulating their vote, after a mutual council had dismissed Mr. Norton; met them again, in mutual council at Boston; and finally, in company with the governor, at least twenty-four men, on horseback, went from Boston to Ipswich, and there, in mutual council, enlightened the church of Ipswich, so that they gave up their beloved pastor, after a three years' contest.[1] The General Court would not sanction Mr. Norton's coming to Boston, much as he was needed to fill Mr. Cotton's place in church and state,—much as he wanted to come himself.[1] A fainter reliance on the sure actings of common Christian sense might have dispensed with the expostulation and all the councils, and left us a precedent in 1656, in full bloom, of English or Scotch arbitrary ecclesiastical law, in the Ipswich case, with all the machinery of

heretofore cited. For instances of other clergy of the Episcopal denomination, see The Church Review; Delancy *v.* Davenport, viii. 468; Doane *v.* ———, xi. 523; Walker's case, vi. 639; Carey's case; Prescott's case.

[1] Mr. Norton died April 5, 1663. To his latest day, he abated none of his reverence for ecclesiastical councils. The Cambridge Platform has its great weight in his estimation as the result of a council. In his sermon, delivered three days before his death, at the Thursday Lecture, he says, "Remember that we have this pattern in the Mount. I mean, we have the Scriptures as a rule; and you have the platform of church discipline, given to you in way of council, as the confession of our faith to this way of church government. You know in what manner it was, that which (for the substance of it) owns the cause congregational. If any are departed from it, let them look to it." Appendix to John Wise, edition 1772, 229.

mandamus, citation, and excommunication for contempt of judgment.[1]

§ 3. It would take long to describe the influences that withheld the General Court, in church matters, from its masculine, rigorous dealing on ordinary occasions; in a word, it may be said, they came into the wilderness on a Christian errand, to found a free church.[2] This anomalous, feminine delicacy and consideration in the treatment of the Ipswich church characterized the treatment of churches generally in the matter of ecclesiastical councils, and to this day affects the decisions of our Supreme Judicial Court in matters ecclesiastical.[3]

In the reported cases, a steady eye is kept on the maxim laid down in Cotton's Book of the Keys, the Cambridge Platform and Savoy Conference, that each particular church is, in a measure, independent as well as congregational; also, that the result of a council, mutual or *ex parte*, however prayerfully or carefully reached, has no more force than the parties

[1] The ante-Revolutionary pamphlets furnish specimens of all the possible results. For one unsatisfactory to all parties, especially to the minister whose doctrines were examined, see the Newbury Council, 1767. A prime remedy then was to form a new parish as soon as the General Court would allow. The difficulty at Eastham was aggravated by the women having to go twenty miles to meeting.

[2] For Judge Washburn's argument, that, in the Puritan's estimation, the free church, free gospel, and free government went abreast, see Congregational Quarterly, July, 1860.

[3] Subordinate reasons had their weight with the learned Court in some cases, thus: The Rev. John Barnard, in 1727, says the Court at Salem, *partly to save themselves trouble,* partly in deference to the church, refused to take up a case on his suggesting that it was in the hands of a council. Mass. Hist. Soc., vol. v. series iii. page 228.

themselves choose to give to it; resembling, ethically and legally, in Massachusetts, good advice, administered under the sanction of the law; which both parties may reject without incurring civil penalties. Should a party accept the result, the law has phrases of commendation to bestow; judicial rebukes are occasionally given to him who declines to accept; but little substantial has the court now-a-days to offer the solitary acceptor of the result of a council. The time has gone by when Lechford enquired, "Were not the counselled *bound* to receive good council? If they would not receive it, was not the *magistrate* ready to assist, and, in a manner according to duty, to *enforce* peace and obedience? Did not the magistrate assist; and was not Master K. compounded with to seek a new place at Long Island; Master Doughty forced to the island Aquednock, and Master Blindman to Connecticut?"[1]

It is not to be denied that councils, thus uncertain in their course and results, are often a sore puzzle and vexation to gentlemen coming from a distance to give their patient attention and candid advice. Accustomed to the prompt, effectual judgments of common-law courts, where execution (the fruit of a judgment) follows the judgment at no great interval, all these advisory solemnities seem trifling. But open as they are to secular criticism, they have had the sanction of the courts, as well as the

[1] Lechford, 107. Some expressions in the Cambridge and Saybrook platforms countenance these remarks of Lechford. Both platforms suggest that churches and individuals, who do not give a prompt and cordial assent to such results, are very censurable.

churches, for two hundred years; and there seems little disposition to modify them: indeed, in one of the latest and best considered expositions of the law and practice of councils, any attempt to alter the established law of Congregational churches, by the parties agreeing beforehand to abide by the result, whatever it may be, is sharply rebuked. The reverend and lay members of the Council of Reading, in 1847, insist that the Congregational church is, and always must be, so spiritual a body that it cannot allow any such expedient from the common law to be foisted into it, directly or indirectly; that the Latin maxim, "*ut finis sit litium*," is not so good as the Scriptural maxim, that the members of a church should be "fully persuaded in their own minds."

§ 4. The leanings of the Supreme Judicial Court, in the matter of accepting a result, are illustrated by the case of Stearns *v.* Bedford,[1] which was decided in 1838. Mr. Stearns was settled in Bedford, 1796, on a salary of three hundred and thirty-three dollars and twenty cords of firewood per annum. The parish loaned him, in 1801, one thousand dollars on his bond, with a surety. Ten years after this, his salary was again raised to five hundred dollars; the cords of wood per annum remaining the same. In 1832, a mutual council was called to "judge, determine, and decide," whether it was "expedient, proper, and just, that his relations with the society be dissolved." The council exonerating Mr. Stearns from

[1] 21 Pick. 214.

all blame decided, that it was "expedient to dissolve it on suitable pecuniary considerations," doctrinal differences having sprung up. The pecuniary considerations were cancelling the bond to the parish, and paying the minister six months' salary. This result reached on the 21st February, Mr. Stearns accepted March 10th; a committee of the parish, on the 22d of April, recommend the parish to accept the result. The parish accepted the report of their committee, so far as to order a committee (larger than the first) to accept the result, "when they have adequate funds, and shall deem it for the interest of the parish to do it, and in the mean time to provide Unitarian preaching." Mr. Stearns, not receiving his bond or his salary, sued the parish for his salary, on the ground, that the parish as well as himself had accepted the result of the mutual council. The Court say, that, if the mutual council had been referees or arbitrators, the case would be a plain one; but both parties, having submitted themselves to a mutual council, must take such judgment as a mutual council can give; which is no judgment binding at all on either party, until both had accepted the result; and, until such acceptance, the Supreme Court could not enforce it: they had not equity or common-law powers sufficient for the purpose.[1]

That the parish had not accepted the result was plain, say the Court. On the 22d of April, they had

[1] That the Court's equity powers are limited in the case of an application by the minister (and a minority of the church who are not pew-holders), so as to be unable to compel the society to allow him to preach, see Clark *v.* Evangelical Society, Quincy, 1858, Gray, .

referred it to a committee "to see about it; on the 27th, Mr. Stearns had brought his suit. Five days was not a long time for a country corporation to consider or "see about" a matter. By not cancelling the bond or paying the salary, they showed, beyond peradventure, that they had not accepted the result. A sharp legal rebuke is administered to the unhandsome parish of Bedford by Mr. Justice Morton. On the next page, however, in a new suit, the treasurer of the parish, unabashed, recovers judgment on the bond for one thousand dollars, against Mr. Stearns' surety. The aged minister, escaping courts and councils, parishes and treasurers, had died meanwhile. This sad ending of forty years' service of a Congregational parish conveys little comfort to ministers, old or young.

Melancholy and rough as the decision is, it expresses with legal precision the truth so dear to the Congregational heart, that there is no power on earth, or under the earth (in Heaven alone it is lodged), to compel a minister, a church, an individual, or a religious society, to accept the result of an ecclesiastical council. Mr. Stearns had the sympathy of the Supreme Judicial Court, but he must wait till light broke in upon the inhabitants of Bedford: just as, in the days of the Fathers, the Great and General Court had to wait, and the First Church in Boston had to wait, and Mr. Norton had to wait, until Heaven itself should "proceed to move the church in Ipswich to proceed to grant the request of the First Church in Boston."

§ 5. Attempts, early and late, to alter the Congre-

gational polity in these respects have failed. The Presbyterian elements introduced in the Cambridge platform of 1648, "after great contentions between the godly, reverend, and learned brethren of the Presbyterian judgment; and the dissenting, godly, reverend, and learned brethren commonly called Independent,"—these scattered elements are nearly eliminated in our day.[1]

The attempts made by the Synod of 1662, and again by the Boston Association of Ministers in 1705, to give ministerial associations ecclesiastical power as standing councils, were strenuously resisted.[2] The want of some tribunal to try large clerical offenders was lamented with great sincerity, and an attempt made in 1815 to give to the conferences of churches certain consociational powers, after the manner of the Saybrook platform. Again, through the Massachusetts General Association of Ministers in 1845, an effort was made in the same direction, but with no better success.[3]

Various trials, in neighboring States, of ministers

[1] 1 Felt, Eccles. Hist. 545. For the English discussions between Presbyterians and Independents, see Hanbury, 3 vols. That John Robinson's views of polity were mingled, partly Congregational, partly Presbyterian, see Repertory, 1857, 188.

[2] See Churches Quarrel Espoused, by John Wise.

[3] Panoplist, 1812, 1815; Dr. Emmons, Dr. Samuel Spring, Dr. Elijah Parish; Dr. Samuel Worcester's Life, vol. ii., 297–300; Hon. John Lowell's Reply, 1816; Dr. Aaron Bancroft's Sermon, June 23, 1816, 2d ed.; Reading Council, 1847; Howard Street (Salem) Council, 1849, 2d ed. A question might be raised, whether the Unitarian controversy had not rendered the orthodox churches more steadfast in polity as well as doctrine. Can all the wholesome results in this direction be ascribed to the excision of 1837?

and of churches, before large tribunals, have rather served to attach the Massachusetts Congregationalist to his homely, local, ecclesiastical councils, called in for the occasion, composed of neighboring ministers and laymen, for the trial of all cases, great and small.[1] If we listen to complaints in regard to the want of discipline and the infirmity of church courts in other denominations, we cannot take seriously to heart the strictures upon Massachusetts councils; especially if we find that as many fundamental points of doctrine and polity are settled in Massachusetts as elsewhere.[2]

§ 6. Looking over the whole subject, we may say that ecclesiastical councils have well done the important work of testifying the Christian sympathy that churches, ministers, and members have for each other; that in matters of difficulty, doctrinal and practical, they have sorted well with the eminently

[1] Trial of Rev. Lyman Beecher, D.D.; Rev. Albert Barnes; Rev. Horace Bushnell, D.D. Trial of Rt. Rev. Benjamin T. Onderdonk. Trial of Rev. Hooper Cummings, 1817; City Library. Trial of Rt. Rev. George W. Doane. Dexter's Congregationalism, 288. Dutch Church of Albany *v.* Bradford, 8 Cowen, 459, 1826.

[2] The English establishment despairs of curing defects in discipline by statute law. Law Mag. and Rev. viii. 28. For many years, American Presbyterians have bemoaned their system of trials before the General Assembly, and their multifarious business. Repertory, 1835, 179; 1840, 454; 1857, 497; 1861, 590. That the Connecticut consociational plan falls to pieces when put to work, see Repertory, 1853, 598. Episcopalians, each time approximating a Massachusetts council, have often amended their rules, for the trial of bishops and other clergy, by separate tribunals, and are not yet content. The Methodists have promising lists of disciplinary questions officially decided by each bishop. See Porter's Compendium, 406.

free spirit of the people, aiming at the truth without claiming absolute deference for their results, — without putting restraints upon the freest appeal to ordinary courts of justice.

It is no slight merit, we may further add, that these domestic tribunals have been well understood by courts of justice who have not, on appeal, disparaged their results because they were reached by no precise rules of the common law; but have always treated them with deference; carrying the deference so far that a legal maxim has been circulated, subject to qualifications, to the effect that the result of an ecclesiastical council in Massachusetts avails a party, by way of protection, in a court of justice, in case he accepts the result, and the other party declines to accept.

Let us examine the maxim and its qualifications. There have been six or eight cases treating of ecclesiastical councils in the Supreme Judicial Court; all of them appeals in regard to the dismission of ministers. In Avery *v.* Tyringham,[1] where the maxim is broached, by Chief Justice Parsons, that the party accepting the result is protected if the other refuse to accept, there was no occasion for it; for Mr. Avery was improperly dismissed, by vote of the town, without a council. It is therefore an *obiter dictum*, thrown out by that eminent judge in the course of a statement of his views in regard to the nature and dignity of councils. Burr *v.* Sandwich, in 1812, was the next case in which Chief Justice

[1] 3 Mass. 160.

Parsons laid down the maxim. An *ex parte* council had advised Mr. Burr to leave, on account of irreconcilable differences in theology; he having become more and more Calvinistic, while his parish remained Arminian. Here the parish accepted the result of the council: Mr. Burr and the church did not.[1]

In 1813, Chief Justice Parsons died, having, in these two cases, marked out the main features of the ecclesiastical law of Massachusetts. In his endeavor to anticipate all questions that might arise, he was inclined to make a council more of a court, or board of referees, than the later Puritan fathers were. It is true, that, by going far back for a precedent, Chief Justice Parsons might consider this one of the occasions described in Hubbard's History, where the civil magistrate might put an end to controversies, thereby promoting uniformity; to wit: where neighboring ministers "could not heal breaches; or the apprehensions of messengers were differing; or the offending parties were contumacious." [2]

Chief Justice Parker, colleague and successor of Chief Justice Parsons, held office till 1830: his first ecclesiastical case was Cochran *v.* Camden. There was no occasion to express an opinion on the point (for the minister was dismissed without having the offer of a council); and the chief justice was not so constructive a genius in the law as his predecessor. In the two Rehoboth cases, in 1828, the minister was abundantly dismissed, by several coun-

[1] Burr *v.* Sandwich, Mass. 9, 277. For Mr. Burr's Theology, see Cong. Quar., April, 1865, 196.

[2] Hubbard, 608.

cils, and the society accepted the result. Putting themselves under the protection of the maxim, they refused to pay the salary; but the Court claimed the privilege of looking into all the proceedings, from first to last, — the construction of the council, its acts, and result; on both occasions denying the maxim any practical force.

Without attempting to give all the limits of the discussion, in one direction it has been decided that a council, in 1832, though regular and impartial in its beginning, middle, and end, cannot effectually dismiss a minister for refusing to make exchanges with other ministers, for neglecting to reply to communications from committees of the parish, however willing his people may be to have him dismissed on these grounds, — however cheerfully they accept the result, — if the minister do not accept it as well.[1] Another qualification is the case of Stearns *v.* Bedford. How little aid, in that case, the result of a council was to the minister, we already know.

But Mr. Pierpont, who has profited beyond most in the law-ecclesiastical, what substantial protection has he derived from the maxim, which was repeated in 1844, in his behalf, by Mr. Justice Wilde, after a silence of many years?[2] Mr. Pierpont, after contending with the Hollis Street society five years, accepted the result of a council, which the society refused to accept. An equivalent for his salary, which should have been paid by the society, was

[1] Sheldon *v.* Easton, 24 Pick. 281. See ch. 7, § 9.

[2] Proprietors *v.* Pierpont, 7 Met. 495.

paid to him out of a trust fund belonging to the church, through the aid of a friendly deacon, having charge of the fund. In two of the suits, brought by the parish, against Mr. Pierpont and the deacon, the Court virtually say, that Mr. Pierpont remained the pastor of the Hollis Street church; that he did not do amiss in accepting the money from the church, and the deacon did not do amiss in paying it, although the sum was due to Mr. Pierpont from the religious society. In the third suit, which grew out of this council and its result, the Court grant Mr. Pierpont a respite from new suits, having for their object to inquire whether he really wrote a prologue for the theatre. Mr. Pierpont might well have been excused from answering such questions on grounds having no connection with councils, churches, or courts; but the Court say these questions have already been examined by an ecclesiastical council, a competent and highly respectable tribunal, whose decision, in that instance, is final. Mr. Pierpont, therefore, by accepting the result of a council, which refused to dismiss him, finds himself and the Hollis Street society, after a five years' contest, put by the Court into a position of armed neutrality towards a religious society, — an expensive and dangerous position for nations, however it may be for ministers. And this is all that a court of justice can do towards protecting (under favorable circumstances) a minister who accepts the result of a council, which is rejected by the other party.

§ 7. Thus far, we have spoken of the protection given to a *party* who accepts the result of a council.

To third persons, however, whose duty it is to act under such result, directly or indirectly, the Court extends a more adequate protection; such, for example, as Dr. Adams received, when sued by a member of the Suffolk South Association of Ministers.[1]

But parties themselves, appealing to the Supreme Court from the result of an ecclesiastical council, will bear in mind ever the explicit rules laid down in Stearns *v.* Bedford. They will not be misled by an instance or two of apparent success. The rules are these: The Court always look behind the adjudication of the council. To have any validity whatever, it must appear from the proceedings: 1st, That the cause for calling the council was sufficient; 2d, That the members were properly selected; 3d, That they proceeded impartially, and with due regard to the rights of all parties; 4th, That their result, besides being formal and explicit, is based on grounds that will sustain it; and finally, that the result of a council thus proper in every respect, when laid before the Court is only *primâ facie* evidence,

[1] In Fairchild *v.* Adams, a very respectable board of referees exonerated the defendant, who adhered to the original unfavorable decision of the association, though a verdict had been subsequently obtained in Court exculpating the plaintiff (Law Reporter, vol. xiv. 278); see also 1 Choate, Writings 167, for a statement of the points before the referees. This award of the referees is criticised (14 Law Reporter, 395) on the ground, that an association of ministers is only a club, without right to scrutinize or publish its members. The Supreme Court upheld the award (11 Cush. 549), on the ground that the ministerial association was a tribunal to which Mr. Fairchild, a member, had submitted his case originally, and for review, and the defendant had shown no malice.

and derives its binding force mainly from the consent of parties.

If the maxim of Chief Justice Parsons has not received its full interpretation; if it has not yet made all the vibrations between the later Puritan theory and the high ecclesiastical theory, of which it is capable,—theologians will bear in mind that they are busy upon axioms connected with the early life of Adam, our progenitor; among lawyers, it will excite no surprise that judges are limiting and expounding the maxims of 1807, in regard to the delicate subject of appeals from ecclesiastical councils to civil courts.[1]

As we draw to a close, we will not exhaust our stores of encomium upon the courts and the councils of Massachusetts. Whatever estimate others may put upon our ecclesiastical councils, which are the life and soul of Congregationalism, their advantages are certainly appreciated by the people at home, who have seen them, in times of peace and war, carrying the Congregational churches along, in reasonable purity and energy, through the great practical and doctrinal trials of the past two hundred years.

It is pleasing, moreover, to notice that these councils are growing in public favor. When the Congregational churches of the country met at Boston, in June, 1865, there was no call for new church courts in an ascending scale, with new rights of appeal,

[1] In the Presbyterian Church, after many years of discussion, appeals and their effects are still a mystery. Dr. McPheter's Case, Presbyterian, June 28, 1864. So in the English Establishment, Christian Observer for May, 1865.

complaint, review, reference, reason, remonstrance, and protest; but the churches approved and confirmed, by their elders and messengers, the simple advisory gatherings of neighboring ministers and laymen, which the Fathers had adopted, without European precedent. They fully believed that so long as we occupy ourselves in propagating the gospel in simplicity, maintaining, at the same time, a learned and godly ministry and schools, these ecclesiastical councils of the New England pattern will be found competent to discharge all the modest functions of church courts.[1]

[1] See Platform of Polity, Cong. Quar., July, 1865.

APPENDIX.

APPENDIX.

A.

Statute 1786, Chapter 10.

§ 1. *Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same,* That the bounds and limits of precincts and parishes, as they have been formerly settled, be, and hereby are, confirmed and established, until they shall be otherwise ordered by the General Court. And the inhabitants of each respective parish and precinct, who shall pay in one tax, exclusive of the poll or polls, a sum equal to two-thirds of a single poll tax, shall, in the month of March or April annually, meet and assemble together at such time and place, in the same parish or precinct, as they shall be notified to attend by the collector thereof, or such other person as the assessors thereof shall appoint to notify the same; and the said inhabitants shall then and there, by a major vote, by ballot, or such other method as they may determine convenient, choose a town clerk, who shall be under oath truly to record all votes passed in the same, or any other regular meeting of the corporation, during the time he shall remain in office; two or more able and judicious persons for assessors, a treasurer, collector and other usual parish or precinct officers. And no person in commission for any office, civil or military, church officer, member of the council, senate, or house of representatives, for the time being, nor any one who has served in the office of constable or collector of any town, district, parish, or precinct within the term of seven years, shall be obliged to serve in the office of collector. And every person chosen to the office of collector, and not exempted as aforesaid, if he be able in person to execute the same, and of the same denomination of Christians

as those of the major part of the parish or precinct who shall choose him, who shall refuse to take the oath to that office prescribed, and to serve therein, shall forfeit and pay to the use of the same precinct or parish, the sum of three pounds. And the person chosen collector shall, if present, forthwith declare his acceptance or refusal, and in case of non-acceptance, the parish or precinct shall proceed to a new choice, and so from time to time until one shall accept and be sworn; and any person so chosen, who shall be present, and shall not declare his acceptance of the office of collector, or who shall neglect, after being summoned by a constable or any other person whom the clerk or assessors may appoint for that purpose before the clerk, to take the oaths of office for the space of seven days next after being notified or summoned, as aforesaid (which oath as well as the oath of all other parish or precinct officers the clerk for the time being is hereby authorized and empowered to administer) and shall neglect to pay the fine aforesaid, may be compelled to pay the same by the same mode of process, in the Court of General Sessions of the Peace, that fines may by law be recovered of persons refusing to serve in the office of constable.

§ 2. *And be it further enacted by the authority aforesaid*, That assessors of precincts or parishes shall be empowered to manage their prudentials unless a committee shall specially be appointed for that purpose, which any precinct or parish is empowered to choose if they think proper; and the said committee, where any such shall be chosen, and the assessors, where no such committee shall be appointed, shall have like power and authority in all respects for calling parish or precinct meetings as selectmen by law have for calling town meetings; and in case of a vacancy in any parish or precinct office chosen in March or April, the same vacancy may be filled at a parish or precinct meeting, regularly notified at any other season of the year. And the moderator of a parish or precinct meeting shall have the like power and authority in governing the meeting as the like officer by law has in a town meeting; and persons misbehaving in parish or precinct meetings shall be subjected to similar punishments to the use of the parish or precinct, as persons misbehaving in town meetings; and the penalties to be recovered in the same manner. And the moderator, in

case no justice of the peace is present, may also administer, in open meeting, the oath of office to the clerk thereof. And when ten or more of the qualified voters of any precinct or parish shall signify, in writing, their desire to have any matter or thing inserted in a warrant for calling a meeting, it shall be the duty of the assessors to insert the same in the next warrant they shall issue for that purpose; and no matter or thing shall be acted upon in such a manner as to have any legal operation whatever unless the subject matter thereof shall be inserted in the warrant for calling the meeting. And in case the assessors shall unreasonably refuse to call a meeting, or a parish or precinct shall have no assessors within it to call one, or not a major part of the assessors or committee which any parish may agree upon to be chosen, any justice of the peace, for the same county, upon the application of ten or more of the voters in the parish or precinct, may call a meeting, in the same manner as a justice of the peace is by law authorized to call a town meeting.

§ 3. *And be it further enacted by the authority aforesaid*, That the qualified voters aforesaid at any parish or precinct, at the annual meeting in March or April, or at any other parish or precinct meeting regularly notified, at least seven days before the holding thereof, may grant and vote such sum or sums of money as they shall judge necessary for the settlement, maintenance, and support of ministers or public teachers of religion; for the building or repairing of houses of public worship, and all other necessary parish or precinct charges, to be assessed on the polls and property within the same as by law provided. And the inhabitants of each respective parish and precinct are hereby declared to be a body corporate, and as such may commence and prosecute any action or suit to final judgment and execution, in any court proper to hear and determine the same, and may also defend any suit or action that may be brought against them; for which purposes they may constitute one or more agents or attorneys, in the same manner as towns may constitute and appoint agents; and the evidence of their appointment may be ascertained in the same manner.

§ 4. *And be it further enacted by the authority aforesaid*, That where any town or district consisting of but one parish

only has been, or hereafter shall be, divided or made into two or more precincts or parishes, any engagements or contracts entered into by such town or district, before such division, of a precinct or parochial nature solely, shall not by such division be considered as released, cancelled, or extinguished; but the same shall remain in full force, and be obligatory on the inhabitants residing, and the estates lying, within the limits of the first parish or precinct of the same town or district, who shall be deemed and taken as successors to the town or district, so far as relates to precinct or parochial agreements and contracts, to every intent and purpose whatever; *provided always*, that all debts of a precinct or parochial nature, that are or shall be in fact due and owing from any town or district, before a division thereof into precincts or parishes, for services or other matters actually done and performed, for the general benefit of the persons who shall after be included in each of the precincts or parishes, shall in no respect be altered or devolved upon the first parish or precinct, as the successors of the said town or district, in its precinct or parochial capacity, anything herein contained to the contrary notwithstanding.

§ 5. *And be it further enacted by the authority aforesaid*, That in all such towns or districts where one or more parishes or precincts shall be regularly set off from such towns or districts, the remaining part of such town or district is hereby deemed, declared, and constituted an entire, perfect, and distinct parish or precinct, and shall be considered as the principal or first parish or precinct. (This act passed June 28, 1786.)

B.

Statute 1799, Chapter 87.

§ 1. *Be it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same*, That the respective churches connected and associated in public worship with the several towns, parishes, precincts, districts, and other bodies politic, being religious societies, established according to law, within this Commonwealth, shall, at all times, have, use, exercise, and enjoy all their accustomed privileges and

liberties, respecting divine worship, church order, and discipline, not repugnant to the constitution of this Commonwealth, and shall be encouraged in the peaceable and regular enjoyment and practice thereof.

§ 2. *Be it further enacted*, That every corporate town, parish, precinct, district, or other body politic, or religious society aforesaid, is hereby required to be constantly provided with a public Protestant teacher of piety, religion and morality; and in default of being so provided and supplied, for the term of three months in every six months, such town, parish, precinct, district, and other body politic or religious society, which shall, in the judgment of the court of general sessions of the peace for the same county, be adjudged of sufficient ability to be so provided, shall pay a fine, for a first offence, of a sum not exceeding *sixty dollars*, nor less than *thirty;* and for each and every like offence after the first, a fine not exceeding *one hundred dollars*, nor less than *sixty dollars*, together with costs of prosecution; such fine to be recovered by indictment in the court of general sessions of the peace, in the county where such delinquency may happen, and levied on the inhabitants composing such town, parish, precinct, district, and other body politic and religious society, so delinquent, in the same manner as other fines are levied on the inhabitants of towns. And every such fine shall be disposed of, by order of said court, to the support of the public worship of God, in such religious society in the same county, as, in the opinion of said court, shall stand most in need thereof.

§ 3. *Be it further enacted*, That any contract made by such town, parish, precinct, district, and other body politic, or religious society, with any such public teacher aforesaid, as may be by them respectively chosen for their teacher or religious instructor, shall have the same force, and be as binding on such corporation or religious society, as any other lawful contract; and all courts of competent jurisdiction shall have power to sustain suits brought to enforce their performance. And in order that all the citizens of this Commonwealth may, according to the wise and reasonable provision of the constitution, be alike required to contribute to the support of their public teachers aforesaid:

§ 4. *Be it further enacted*, That every town, parish, precinct,

district, and other body politic and religious society aforesaid, is hereby authorized to cause all sums of money by them respectively voted to be raised from time to time in any legal meeting duly assembled or holden for that purpose, for the settlement or support of any public teacher or teachers as aforesaid, or the building or repair of any house or houses of public worship, to be assessed on all the ratable polls of each particular corporation or religious society aforesaid (the polls and estates of Quakers excepted), in the same proportion as state or town taxes are by law assessed. And such sums of money, when so assessed and collected, shall be paid to the treasury of such town, if composed of one parish or society; if otherwise, to the treasurer of the parish, precinct, district, or other body politic or religious society aforesaid, to be by him paid out as directed and ordered by the selectmen of such town or district committee (where chosen), or otherwise by the assessors of such parish, precinct, and other body politic, or religious society, for the purpose for which such money was raised: *Provided, however*, That when any person taxed in any such tax or assessment voted to be raised as aforesaid, for the purpose aforesaid, being, at the time of voting or raising any such tax or assessment, of a different sect or denomination from that of the corporation, body politic, or religious society by which said tax was so assessed, shall request that the tax set against him or her, in the assessment made for the purpose aforesaid, may be applied to the support of the public teacher of his own religious sect or denomination; such person procuring a certificate signed by the public teacher on whose instruction he usually attends, and by two other persons of the society of which he is a member (having been specially chosen a committee to sign such a certificate), in substance as follows, viz.: We the subscribers, A B, public teacher of a society of the religious sect or denomination called in the town, district, precinct, or parish of and C, D, E, F, committee of said society, do hereby certify that doth belong to said society; and that he (or she, as the case may be) frequently and usually, when able, attends with us in our stated meeting for religious worship.

Which certificate having been produced to the selectmen, committee, or assessors (as the case may require) of the town, dis-

trict, parish, precinct, or other body politic or religious society, by whom he or she has been taxed as aforesaid, it shall be sufficient to require them respectively to order and direct the treasurer of such corporation or religious society to pay over the amount of such taxes, so applied for, to the use of the public teacher of the religious sect or denomination to which such applicant belongs; and such public teacher shall thereby be entitled to receive the same.

§ 5. *Be it further enacted*, That the assessors of each parish or religious society of this Commonwealth may omit, in the taxes voted to be assessed on the polls and estates within such parish or society, such persons living within the limits of the same as belong to and usually attend public worship in a religious society of a different denomination. *Provided*, That nothing in this act contained shall take from any church or religious society in the town of Boston, or any other town, the right and liberty to support the public worship of God by a tax on pews, or other established mode.

§ 6. *Be it further enacted*, That all laws providing for the settlement of ministers, and the support of the public worship of God, made prior to the adoption of the present constitution of this Commonwealth, be, and hereby are, repealed, except so far as relates to the recovery of all fines and penalties accruing under the the same, the fulfilment of all contracts made under and by virtue thereof.

(This act passed March 4, 1800.)

C.

General Statutes 1860, Chapter 30.

Of Parishes and Religious Societies.

Section 1. Every religious society established or organized by virtue of any statute shall be and continue a body corporate, with the powers given to corporations by chapter sixty-eight, and the powers, privileges, liabilities, and duties set forth in this chapter; but this chapter shall not enlarge nor diminish the powers of taxation enjoyed by any religious society by virtue of a special law or act of incorporation, nor impair existing rights of property of any territorial parish.

Sect. 2. Religious societies, whether corporate or unincorpor-

ate, shall continue to have and enjoy their existing rights, privileges, and immunities, except so far as the same may be limited or modified by the provisions of this chapter.

SECT. 3. The respective churches connected and associated in public worship with such religious societies shall continue to have, exercise, and enjoy all their accustomed privileges and liberties respecting divine worship, church order, and discipline, and shall be encouraged in the peaceable and regular enjoyment and practice thereof.

SECT. 4. A religious society that is not incorporated, or which may be unable to assemble in the usual manner, if it contains ten or more qualified voters, may organize and become a corporation, with the powers, privileges, duties, liabilities, and requirements of such societies, and may hold so much estate, real or personal, as may be necessary for the objects of such organization, and no more; but all the powers derived from such organization may be revoked by the legislature.

SECT. 5. Any justice of the peace for the county in which such society may be, upon application in writing by five or more of the qualified voters thereof, may issue his warrant directed to some one of the applicants, stating the objects, and requiring him to warn the qualified voters of the society to meet at a time and place appointed in the warrant; and the same may be served by posting an attested copy thereof on the principal outer door of the meeting-house, or leaving such copy with or at the last and usual place of abode of such voters, seven days at least before such meeting; and, upon due return thereof, the same justice, or any other justice of the peace for the county, may preside at the meeting for the choice and qualification of a clerk, who shall enter at large upon the records of the society the proceedings had in the organization thereof; and the society may thereupon proceed to choose a moderator, and do such other things as parishes are by law authorized to do at their annual meetings: *provided*, the subject matter thereof is inserted in the warrant.

SECT. 6. Persons belonging to a religious society shall be held to be members until they file with the clerk a written notice declaring the dissolution of their membership; and they shall not be liable for any grant or contract thereafter made or entered into

by such society. No person shall be made a member of such society without his consent in writing.

SECT. 7. Every religious society may make by-laws not repugnant to the laws of the Commonwealth, and therein prescribe the manner in which persons may become members.

SECT. 8. No person shall have a right to vote in the affairs of such society unless he is a member thereof.

SECT. 9. The qualified voters of every parish and incorporated religious society, and of every society organized according to the provisions of this chapter, shall hold an annual meeting in the month of March or April, or at such other time as they may prescribe by their by-laws, and, if the by-laws do not otherwise determine, at a time and place appointed by their assessors or standing committee; and at such meeting shall choose a moderator, clerk, two or more assessors, a treasurer and collector, and such other officers as they think necessary, all of whom, except the moderator, shall continue in office till the next annual meeting, and till others are chosen and qualified in their stead.

SECT. 10. Moderators of meetings held for the choice of officers shall be elected by written ballots. Clerks, assessors, treasurers, and collectors, shall be elected by written ballot and shall be sworn. Other officers may be elected in such mode as the society may determine.

SECT. 11. The prudential affairs of such societies shall be managed by their assessors, or a standing committee specially appointed for that purpose; and the assessors or committee shall have like authority for calling meetings as selectmen have for calling town meetings.

SECT. 12. If there are no assessors or committee, or if they unreasonably refuse to call a meeting, any justice of the peace for the county, upon the application of not less than five qualified voters, may call one in the manner provided in section five.

SECT. 13. The assessors or committee shall insert in the next warrant they issue for calling a meeting any matter which not less than five qualified voters of the society in writing request. Nothing acted upon shall have any legal operation, unless the subject matter thereof was inserted in the warrant.

SECT. 14. Meetings shall be warned in the manner provided

by any by-law or vote of the society, and, when no provision is made, in such manner as the assessors or standing committee in their warrant for such meeting direct.

SECT. 15. The clerk, or if there is no clerk or he is absent, the assessors or the standing committee, or any one of them, shall preside in the choice of a moderator; and a clerk may then be chosen, either *pro tempore* or to fill the vacancy, as the case may require. The moderator may administer the oath of office to the clerk; and the clerk to the assessors and collector; or said oaths may be administered by a justice of the peace; and they shall be substantially the same as are required to be taken by the clerk, assessors, and collectors of towns.

SECT. 16. The moderator shall have the same power as the moderator of a town meeting; and persons guilty of disorderly behavior at a meeting shall be subject to the penalties and punishments provided for like offences in town meetings.

SECT. 17. If the person chosen collector is present, and accepts the office, he shall forthwith be sworn. If not present, he shall be summoned to take the oath by a constable, or any person whom the clerk or assessors may appoint for the purpose. Upon the refusal or neglect of a person present to accept the office at the time, and upon the neglect of a person so summoned, for the space of seven days, to appear and take the oath, the society shall proceed to a new choice; and so from time to time, until some person accepts and is sworn.

SECT. 18. Vacancies in any of the annual offices, occuring after the annual meeting, may be filled at any other legal meeting.

SECT. 19. The rector, or one of the wardens, of religious societies belonging to the body of Christians known as the Protestant Episcopal Church, organized under the laws of the Commonwealth, may, unless it is otherwise provided in some by-law, preside at their meetings with all the powers of a moderator; and the wardens, or wardens and vestry, may exercise all the powers of a standing committee in accordance with the usage and discipline of said church. Unless they assess or collect a tax on the polls, estates, or pews, of the members thereof, such societies need not choose a collector or assessors; and they may in their by-laws provide, that

the duties of assessors shall be performed by the wardens. But the officers upon whom the duties of standing committee or assessors may devolve shall in all cases be elected by ballot.

SECT. 20. The qualified voters of each religious society, at the annual meeting, or at any other meeting regularly notified seven days at least before the holding thereof, may grant and vote such sums of money as they judge necessary for the settlement, maintenance, and support of ministers or public teachers of religion; for the building or repairing of houses of public worship; for sacred music; for the purchase and preservation of burial-grounds; and for all other necessary parish charges; which sums shall be assessed on the polls and estates of all the members of the society, in the same manner and proportion as town taxes are by law assessed.

SECT. 21. The assessors shall assess the taxes upon the property (not exempted by law from taxation) of all the members of the society, including their real estate within the state, in whatever part thereof it may be situated, and their personal estate, wherever the same may be; and no citizen shall be liable to pay a tax for the support of public worship or other parish charges, to a society other than that of which he is a member.

SECT. 22. No corporation shall be taxed for any parochial purpose. Nor shall any person be taxed in a parish or religious society for property held by him as guardian or trustee.

SECT. 23. Every society may appoint its treasurer collector of taxes; who shall have like powers and proceed in like manner, in enforcing the collection of such taxes after the expiration of the time fixed by the society for the payment thereof, as provided in chapter twelve for the collection of taxes by collectors of towns; and any society may authorize its treasurer and collector to make an abatement of such sum, as it may agree upon at its annual meeting, to those who make voluntary payment of their taxes within such periods, as may be determined by the society.

SECT. 24. Unincorporated religious societies shall have like power to manage, use, and employ, any donation, gift, or grant, made to them, according to its terms and conditions, as incorporated societies have, by law; may elect suitable trustees, agents, or

officers therefor; and sue for any right which may vest in them in consequence of such donation, gift, or grant; for which purposes they shall be corporations.

SECT. 25. Incorporated and unincorporated religious societies may appoint trustees, not exceeding five in number, to hold and manage trust funds for their benefit, who shall hold their offices five years and until others are appointed in their stead, with power to fill vacancies for an unexpired term occurring in their board. Such societies, at or before the time of the first appointment of the trustees, may establish rules and regulations for their government, which shall be considered as of the nature of a contract, and not subject to alteration or amendment except by all the trustees in office at the time, and by a two-thirds vote of the society interested therein.

SECT. 26. The terms "religious society" and "society," in the preceding sections, shall include parishes.

SECT. 27. Persons owning or proposing to build a house of public worship may organize themselves in the same manner as religious societies are authorized to do by the provisions of this chapter; and shall thereupon become a corporation, with the powers, privileges, duties, restrictions, and liabilities, set forth in chapter sixty-eight, and in the following sections; but all the powers derived from such organization may be revoked by the legislature.

SECT. 28. Every such corporation may hold so much real and personal estate, in addition to its meeting-house, as may be necessary for its objects, and as has been agreed and determined on at the meeting held for the purpose of organization; and the annual income thereof shall be applied to parochial purposes.

SECT. 29. The clerk of every such corporation shall, within ten days of such meeting, leave with the clerk of the town or city in which such house of worship is situated, or is about to be built, a true copy of the record of the proceedings. If he fails so to do, the organization shall be void. The copy shall be recorded by the clerk receiving it in a book kept for the purpose, for which he shall receive the fee of the register of deeds for like services.

SECT. 30. When the proprietors deem it expedient to alter, enlarge, repair, rebuild, or remove their house, or build a new

one, they may, at a legal meeting called for that purpose, raise such sums of money as they may judge necessary for the purpose, and to purchase land necessary therefor.

SECT. 31. A meeting of the proprietors for any of the purposes aforesaid, may be called in the manner prescribed in the by-laws or votes of the corporation, or by a warrant granted by a justice of the peace on application in writing by any five of said proprietors, which warrant shall be directed to one of the applicants; or such meeting may be called by a notification by the clerk of the proprietors, who shall warn a meeting on a like application to him; and in either case the meeting may be warned by notification served as provided in section five.

SECT. 32. Money raised may be assessed on the pews in such house, and the assessment may be committed to the treasurer of the proprietors, who shall forthwith give notice, by posting up an advertisement at the principal outer door of the house, stating the completion of such assessment, and the day of delivery thereof to him; and if any part of said taxes remains unpaid for three months afterwards, the treasurer shall collect the same forthwith by sales at public auction of the pews whereon the same remains unpaid, in the manner provided in the following sections.

SECT. 33. The treasurer shall post up a notification of the intended sale of a pew for taxes at the principal outer door of such house, at least three weeks before the time of sale, setting forth the number of the pew, if any, the name of the owner or occupant, if known, and the amount of the tax due thereon; and if any part of the said tax remains unpaid at the time, the treasurer shall sell the pew at public auction, to the highest bidder, and shall execute and deliver to the purchaser a sufficient deed of conveyance. The money arising from the sale, beyond the taxes and incidental reasonable charges, shall be paid by the treasurer to the former owner of the pew, or to his assigns.

SECT. 34. An affidavit annexed to an original notification or to a copy thereof, made before a justice of the peace, and recorded on the proprietors' records within six months next after such sale, shall be allowed as one mode of proof of the posting up of the notifications herein before required.

SECT. 35. Such proprietors, for the purpose of building a new

house, or of altering, enlarging, repairing, rebuilding, or removing, their house already built, may sell their house, or take down any pews therein; the pews taken being first appraised by three or more disinterested persons chosen by the proprietors for that purpose. The pews newly erected shall be sold by their treasurer at public auction to the highest bidder, and deeds thereof given in like manner as when pews are sold for the payment of taxes. The money arising from such sale shall be applied, so far as may be necessary, to paying the appraised value of the pews taken down; and the deficiency, if any, shall be paid by the proprietors of such house, within thirty days after the sale.

Sect. 36. Under the regulations of the preceding section, a parish or religious society, whenever it deems it necessary for the purpose of building a new house, or of altering, enlarging, removing, or rebuilding, its house already built, may take down any pews therein, or sell the house.

Sect. 37. Nothing contained in the two preceding sections shall entitle a person to compensation for a pew so taken down, when such house is unfit for the purposes of public worship.

Sect. 38. Pews shall be personal estate. But this provision shall not affect any existing right of dower.

Sect. 39. Corporations for religious purposes may assess upon the pews in a church or meeting-house which they have erected or procured for public worship since the twenty-fifth day of March, eighteen hundred and forty-five, according to a valuation of said pews, which shall first be agreed upon and recorded by the clerk, sums of money for the support of public worship and other parochial charges, and for the repairs of the house. Such assessments may be collected in the manner provided in sections thirty-two and thirty-three.

Sect. 40. A corporation which had erected or procured such house prior to the twenty-fifth day of March, eighteen hundred and forty-five, may avail itself of the provisions of the preceding section, if the consent of all the pew-owners is obtained, or two-thirds of the members present and voting at a regular meeting called for that purpose so determine.

Sect. 41. A religious society, which votes to avail itself of the provisions of section thirty-nine, shall, upon the application of a

person owning one or more pews in its house, within one year after said vote, purchase the same at the appraised value. Such appraisal shall be made by three disinterested persons who may be chosen, one by the pew-owner, one by the society, and the third by the two persons thus chosen.

SECT. 42. Any religious society, complying with the requisitions of the two preceding sections, shall be entitled to the privileges and subject to the liabilities incident to those religious societies which have erected or procured a meeting-house for public worship since the twenty-fifth day of March, in the year eighteen hundred and forty-five.

SECT. 43. The trustees of any society of the Methodist Episcopal Church, or of the African Methodist Episcopal Church, appointed according to the discipline or usages thereof respectively, or as such society chooses, may organize and become a corporation, with powers, privileges, duties, and liabilities, of chapter sixty-eight, subject, however, to account to the quarterly meeting of such society, according to such discipline and usages. But all powers derived from such organization may be revoked by the legislature.

SECT. 44. Such trustees may receive, hold, and manage all the property, both real and personal, belonging to such society, and sell and convey the same, and hold in trust gifts, grants, bequests, or donations, made to such society for the support of public worship and other religious purposes: *provided*, that the annual income thereof, exclusive of the meeting-house, shall not exceed four thousand dollars.

SECT. 45. The first meeting of such trustees may be called by a justice of the peace, upon the application of three or more of the trustees; at which they may choose a secretary and other officers. The provisions of this chapter in relation to the warning and organization of meetings of religious societies shall, so far as the same are applicable, be in force in regard to meetings for the organization of such trustees. The secretary, before entering upon the duties of his office, shall be sworn to the faithful discharge of the same, and a record of such oath shall be kept in the records of their proceedings.

SECT. 46. An attested copy of the record of the proceedings

at such organization shall be left with the town or city clerk, and recorded within the time and in the manner prescribed in section twenty-nine. If the secretary omits to leave such copy within the time specified, the organization shall be void.

General Statutes 1860, Chapter 31.

Of Donations and Conveyances for Pious and Charitable Uses.

Section 1. The deacons, church-wardens, or other similar officers, of all churches or religious societies, if citizens of this Commonwealth, shall be deemed bodies corporate, for the purpose of taking and holding in succession all grants and donations, whether of real or personal estate, made either to them and their successors, or to their respective churches, or to the poor of their churches.

Sect. 2. When the ministers, elders, or vestry, of a church are, in the grants or donations mentioned in the preceding section, joined with such deacons or church-wardens as donees or grantees, such officers and their successors, together with the deacons or church-wardens, shall be deemed the corporation for the purposes of such grants and donations.

Sect. 3. The minister of every church or religious society, of whatever denomination, if a citizen of this Commonwealth, shall be capable of taking in succession any parsonage land granted to the minister and his successors, or to the use of the ministers, or granted by any words of like import; and may prosecute and defend in all actions touching the same.

Sect. 4. No conveyance of the lands of a church shall be effectual to pass the same, if made by the deacons without the consent of the church, or of a committee of the church appointed for that purpose, or if made by the church-wardens without the consent of the vestry.

Sect. 5. No conveyance by a minister of lands held by him in succession shall be valid any longer than he continues to be such minister, unless such conveyance is made with the consent of the town, parish, or religious society, of which he is minister, or unless he is the minister of an Episcopal church, and makes the conveyance with the consent of the vestry.

Sect. 6. The several churches, other than those of the Episcopal denomination, may choose committees for the purpose of set-

tling the accounts of the deacons and other church officers, and, if necessary, to commence and prosecute suits in the name of the church against the deacons or other officers touching the same.

SECT. 7. The income of such grant or donation, made to or for the use of a church, shall not exceed the sum of two thousand dollars a year, exclusive of the income of any parsonage lands granted to or for the use of the ministry.

SECT. 8. The overseers of each monthly meeting of the people called Friends, or Quakers, shall be a body corporate, for the purpose of taking and holding in succession grants and donations of real or personal estate made to the use of such meeting, or to the use of any preparative meeting belonging thereto; and may aliene or manage such estate according to the terms and conditions of the grants and donations, and prosecute and defend in any action touching the same: *provided*, that the income of the grants and donations to any one of such meetings for the uses aforesaid shall not exceed the sum of five thousand dollars a year.

SECT. 9. All trustees, whether incorporated or not, who hold funds given or bequeathed to a city or town for any charitable, religious, or educational purpose, shall make an annual exhibit of the condition of such funds to the board of aldermen of the city, or the selectmen of the town, to which such funds have been given or bequeathed; and all transactions by the trustees concerning such funds shall be open to inspection by the board of aldermen of the city, or selectmen of the town, to which the returns are made.

SECT. 10. The probate court for the county in which the city or town is situated, to which funds have been given or bequeathed as aforesaid, may, on the petition of five persons, cite all parties interested to appear before the court to answer all complaints which may then and there be made; and if a trustee has neglected or refused to render such annual exhibit, or is incapable of discharging the trust reposed, or unsuitable to manage the affairs of the same, the court may remove such trustee, and supply the vacancy.

GENERAL STATUTES 1860, CHAPTER 32.

Of Associations for Religious, Charitable, and Educational Purposes.

SECTION 1. Seven or more persons within this state, having associated themselves by agreement in writing for educational,

charitable, or religious purposes, under any name by them assumed, and complying with the provisions of this chapter, shall, with their successors, be and remain a body politic and corporate.

SECT. 2. The purpose of such corporation, and the place within which it is established or located, shall be distinctly specified in its articles of association; which articles, and all amendments thereto, shall be recorded in the office of the register of deeds for the county or district wherein such place is situated; and such corporation shall appropriate its funds to no other purpose.

SECT. 3. Corporations organized under this chapter shall have the powers and privileges, and be subject to the duties, liabilities, and restrictions, set forth in chapter sixty-eight, so far as the same may be applicable.

SECT. 4. Such corporations may hold real and personal estate, necessary for the purposes of their organization, to an amount not exceeding one hundred thousand dollars.

SECT. 5. Their estate shall not be exempted from taxation in any case where part of their income or profits of their business is divided among members or stockholders, or where any portion of such estate is used or appropriated for other than educational, charitable, or religious purposes.

D.

GENERAL STATUTES 1860, CHAPTER 28.

Of Cemeteries and Burials.

SECTION 1. Ten or more persons desirous of procuring, establishing, and preparing a cemetery or burial-place, or being the majority in interest of the proprietors of an existing cemetery, may organize as a corporation in the manner provided in chapter sixty-seven. But in the case of an existing cemetery, the corporation shall not make sale of nor impair the right of any proprietor.

SECT. 2. Such corporation shall have the powers and privileges, and be subject to the duties, restrictions, and liabilities, of chapter sixty-eight, and to the provisions of the first sixteen sections of chapter sixty-seven; may take and hold so much real and personal estate as may be necessary for the objects of its or-

ganization, which shall be applied exclusively to the furtherance of such objects; may lay out such real estate into lots, and upon such terms, conditions, and regulations as the corporation shall prescribe; may grant and convey the exclusive right of burial in, and of erecting tombs or cenotaphs upon, any lot, and of ornamenting the same.

SECT. 3. Lots in such cemetery shall be held indivisible, and upon the decease of a proprietor, his heirs at law, or the devisees of such lot if devised, shall succeed to his privileges. If there is more than one heir or devisee, they shall, within nine months from such decease, designate in writing to the clerk of the corporation which of their number shall represent the lot; and on their failure so to designate, the board of trustees or directors of the corporation shall enter on record which of said heirs or devisees shall represent the lot while such failure continues.

SECT. 4. Each town and city shall provide one or more suitable places for the interment of persons dying within its limits.

SECT. 5. Except in the case of the erection or use of a tomb on private land for the exclusive use of the family of the owner, no land, other than that already so used or appropriated, shall be used for the purpose of burial, unless by permission of the town, or of the mayor and aldermen of the city in which the same is situated.

SECT. 6. Boards of health may make all regulations which they judge necessary concerning burial-grounds, and interments within their respective limits; may prohibit the use of the tombs by undertakers (as places of deposit for bodies committed to them for burial) for the purpose of speculation, and may establish penalties not exceeding one hundred dollars for any breach of such regulations.

SECT. 7. Notice of such regulations shall be given by publishing the same in some newspaper of the town, or city, or, if there is no such newspaper, by posting a copy in some public place therein; which shall be deemed legal notice to all persons.

SECT. 8. Before a tomb, burial-ground, or cemetery is closed by order of the board of health, for a time longer than one month, all persons interested shall have an opportunity to be heard; and personal notice of the time and place of hearing shall be given to

at least one owner of the tomb, and to three at least, if so many there are, of the proprietors of such burial-ground or cemetery, and notice shall also be published two successive weeks, at least, preceding such hearing, in two newspapers, if so many there are published in the county.

SECT. 9. The owner of a tomb aggrieved by the order of the board of health closing any tomb, burial-ground, or cemetery, may appeal therefrom, and at any time within six months from the date of the order enter his appeal in the superior court; and the appellant shall give the board of health fourteen days' notice of his appeal previous to the entry thereof. But the order of the board shall remain in force until a decision shall be had on the appeal.

SECT. 10. Appeals shall be tried in regular course before a jury; and if the jury find that the tomb, burial-ground, or cemetery, so closed, was not a nuisance, nor injurious to the public health at the time of the order, the court shall rescind the same so far as it affects such tomb, burial-ground, or cemetery, and execution for costs of the appeal shall issue in favor of the appellant against the town or city in which the same was situated. But if the order is sustained, execution shall issue for double costs against the appellant in favor of the board of health for the use of the town or city.

SECT. 11. For every interment in violation of section five in in a town or city in which the notice prescribed in section seven has been given, the owner of the land so used shall forfeit not less than twenty nor more than one hundred dollars.

SECT. 12. Whoever wrongfully destroys, impairs, injures, or removes a tomb, gravestone, building, fence, railing, or other thing, lawfully erected in or around a place of burial or cemetery, or a tree, shrub, or plant, situate within its limits; or wrongfully injures a walk or path therein; or places rubbish or offensive matter within a place of burial or cemetery; or commits any nuisance therein; or in any way desecrates or disfigures the same, shall forfeit for every such offence not less than five nor more than one hundred dollars. Upon the trial of a prosecution for the recovery of such penalty, use and occupation for the purposes of burial shall be deemed sufficient evidence of title.

E.

General Statutes 1860, Chapter 84.

Of the Observance of the Lord's Day.

Section 1. Whoever keeps open his shop, warehouse, or workhouse, or does any manner of labor, business, or work, except works of necessity and charity, or is present at any dancing or public diversion, show, or entertainment, or takes part in any sport, game, or play, on the Lord's day, shall be punished by a fine not exceeding ten dollars for every offence.

Sect. 2. Whoever travels on the Lord's day, except from necessity or charity, shall be punished by fine not exceeding ten dollars for every offence.

Sect. 3. Whoever, keeping a house, shop, cellar, or place of public entertainment or refreshment, entertains therein on the Lord's day any persons not being travellers, strangers, or lodgers, or suffers such persons on said day to abide or remain therein, or in the yards, orchards, or fields, appertaining to the same, drinking, or spending their time idly or at play, or in doing any secular business, shall be punished by fine not exceeding five dollars for each person so entertained or suffered so to abide and remain; and upon any conviction after the first, by fine not exceeding ten dollars; and if convicted three times, he shall thereafter be incapable of holding a license; and every person so abiding or drinking shall be punished by fine not exceeding five dollars.

Sect. 4. Whoever is present at a game, sport, play, or public diversion, except a concert of sacred music, upon the evening of the Lord's day, or upon the evening next preceding the Lord's day, unless such game, sport, play, or public diversion, is licensed by the persons or board authorized by law to grant licenses in such cases, shall be punished by fine not exceeding five dollars for each offence.

Sect. 5. No person licensed to keep a place of public entertainment shall entertain or suffer to remain or be in his house, yard, or other places appurtenant, any persons, not being travellers, strangers, or lodgers, in such house, drinking and spending their time there, on the Lord's day, or the evening

preceding the same; and every such innholder or other person so offending shall be punished by fine not exceeding five dollars for each offence.

SECT. 6. No person shall serve or execute any civil process on the Lord's day; but such service shall be void, and the person serving or executing such process shall be liable in damages to the party aggrieved in like manner as if he had no such process.

SECT. 7. Whoever on the Lord's day, within the walls of any house of public worship, behaves rudely or indecently, shall be punished by fine not exceeding ten dollars.

SECT. 8. All sheriffs, grand jurors, and constables shall inquire into and inform of all offences against the preceding provisions of this chapter, and cause the same to be carried into effect.

SECT. 9. Whoever conscientiously believes that the seventh day of the week ought to be observed as the Sabbath, and actually refrains from secular business, travel, and labor, on that day, shall not be liable to the penalties of this chapter for performing secular business, travel, or labor, on the Lord's day, or first day of the week: *provided*, that he disturbs no other person.

SECT. 10. Prosecutions for penalties incurred under the preceding provisions of this chapter shall be instituted within six months after the offence is committed.

SECT. 11. Any innholder, common victualler, or person, keeping, or suffering to be kept, in any place occupied by him, implements such as are used in gaming, in order that the same may for hire, gain, or reward, be used for purposes of amusement, who on the Lord's day, uses or suffers to be used, any implements of that kind upon any part of his premises, shall, for the first offence, forfeit a sum not exceeding one hundred dollars, or be imprisoned in the house of correction not exceeding three months; and for every subsequent offence shall be imprisoned in the house of correction for a term not exceeding one year; and in either case shall further recognize, with sufficient sureties, in a reasonable sum for his good behavior, and especially that he will not be guilty of any offence against the provisions

of this section, for the space of three months then next ensuing.

SECT. 12. The Lord's day shall include the time from midnight to midnight.

GENERAL STATUTES 1865, CHAPTER 253.

For the Better Observance of the Lord's Day.

SECTION 1. Any person who shall discharge any fire-arms for sport, or in the pursuit of game, on the Lord's day, shall, upon conviction thereof, be punished by a fine not exceeding ten dollars.

SECT. 2. Whoever attempts to take or catch any fish on the Lord's day, by using any hook, line, net, spear, or other implement, on any of the waters within this Commonwealth, shall, upon conviction thereof, be punished by a fine not exceeding ten dollars.

SECT. 3. All prosecutions under this act shall be instituted within thirty days from the time the offence is committed. *May* 16, 1865.

F.

GENERAL STATUTES 1860, CHAPTER 106.

Of Marriage.

SECTION 1. No man shall marry his mother, grandmother, daughter, granddaughter, step-mother, sister, grandfather's wife, son's wife, grandson's wife, wife's mother, wife's grandmother, wife's daughter, wife's granddaughter, brother's daughter, sister's daughter, father's sister, or mother's sister.

SECT. 2. No woman shall marry her father, grandfather, son, grandson, step-father, brother, grandmother's husband, daughter's husband, granddaughter's husband, husband's father, husband's grandfather, husband's son, husband's grandson, brother's son, sister's son, father's brother, or mother's brother.

SECT. 3. In all cases mentioned in the two preceding sections in which the relationship is founded on marriage, the prohibition shall continue notwithstanding the dissolution of such marriage, by death or divorce, unless the divorce is for a cause which shows the marriage to have been originally unlawful and void.

SECT. 4. All marriages contracted while either of the parties has a former wife or husband living, except as is provided in chapter one hundred and seven, shall be void.

SECT. 5. No insane person or idiot shall be capable of contracting marriage.

SECT. 6. When persons resident in this state, in order to evade the preceding provisions, and with an intention of returning to reside in this state, go into another state or country, and there have their marriage solemnized, and afterwards return and reside here, the marriage shall be deemed void in this state.

SECT. 7. Persons intending to be joined in marriage shall before their marriage cause notice thereof to be entered in the office of the clerk or registrar of the city or town in which they respectively dwell, if within the state. If there is no such clerk or registrar in the place of their residence, the entry shall be made in an adjoining city or town.

SECT. 8. The clerk or registrar shall deliver to the parties a certificate under his hand, specifying the time when notice of the intention of marriage was entered with him, together with all facts in relation to the marriage required by law to be ascertained and recorded, except those respecting the person by whom the marriage is to be solemnized. Such certificate shall be delivered to the minister or magistrate in whose presence the marriage is to be contracted, before he proceeds to solemnize the same.

SECT. 9. If a clerk or registrar issues such certificate to a male under the age of twenty-one years, or a female under the age of eighteen years, having reasonable cause to suppose the person to be under such age, except upon the application or consent in writing of the parent, master, or guardian, of such person, he shall forfeit a sum not exceeding one hundred dollars; but if there is no parent, master, or guardian in this state competent to act, a certificate may be issued without such application or consent.

SECT. 10. The clerk or registrar may require of any person applying for such certificate, an affidavit sworn to before a justice of the peace for the county where the application is made, setting forth the age of the parties; which affidavit shall be sufficient proof of age to authorize the issuing of the certificate.

SECT. 11. Whoever applying for such certificate wilfully makes

a false statement in relation to the age or residence, parent, master, or guardian, of either of the parties intending marriage, shall forfeit a sum not exceeding two hundred dollars.

SECT. 12. When a marriage is solemnized in another state, between parties living in this state, and they return to dwell here, they shall, within seven days after their return, file with the clerk or registrar of the city or town where either of them lived at the time, a certificate or declaration of their marriage, including the facts concerning marriages required by law, and for every neglect they shall forfeit ten dollars.

SECT. 13. No magistrate or minister shall solemnize a marriage, having reasonable cause to suppose either of the parties to be under the age mentioned in section nine, without the consent of the parent or guardian having the custody of the minor, if there is any in the state competent to act.

SECT. 14. Marriages may be solemnized by a justice of the peace in the county for which he is appointed, when either of the parties resides in the same county; and throughout the State by any minister of the gospel ordained according to the usage of his denomination, who resides within the State, and continues to perform the functions of his office; but all marriages shall be solemnized in the city or town in which the person solemnizing them resides, or in which one or both the persons to be married reside.

SECT. 15. Marriages among the people called Friends, or Quakers, may be solemnized in the manner heretofore used and practised in their societies.

SECT. 16. Every justice of the peace, minister, and clerk, or keeper of the records of the meeting wherein any marriages among the Friends, or Quakers, are solemnized, shall make a record of each marriage solemnized before him, together with all facts relating to the marriage required by law to be recorded. He shall also, between the first and tenth days of each month, return a copy of the record for the month next preceding, to the clerk or registrar of the city or town in which the marriage was solemnized, and shall, when neither of the parties to a marriage resides in the city or town in which the marriage is solemnized, return a copy of the record of such marriage to the clerk or registrar of the city or town in which one or both of said parties reside.

All marriages so returned shall be recorded by the clerk or registrar.

SECT. 17. Every person neglecting to make the returns required by the preceding section shall forfeit for each neglect not less than twenty nor more than one hundred dollars.

SECT. 18. A justice of the peace, or minister, who joins persons in marriage contrary to the provisions of this chapter, knowing that the marriage is not duly authorized, shall forfeit not less than fifty nor more than one hundred dollars.

SECT. 19. Whoever undertakes to join persons in marriage, knowing that he is not authorized so to do, shall be imprisoned in the jail, or confined to hard labor, for a term not exceeding six months, or pay a fine of not less than fifty nor more than two hundred dollars.

SECT. 20. No marriage solemnized before a person professing to be a justice of the peace, or minister of the gospel, shall be deemed or adjudged to be void, nor shall the validity thereof be in any way affected, by want of jurisdiction or authority in such person, or by an omission or informality in the manner of entering the intention of marriage, if the marriage is in other respects lawful, and is consummated with a full belief on the part of the persons so married, or either of them, that they have been lawfully joined in marriage.

SECT. 21. The record of a marriage, made and kept as prescribed by law by the person before whom the marriage is solemnized, or by the clerk or registrar of any city or town, or a copy of such record duly certified, shall be received in all courts and places as presumptive evidence of such marriage.

SECT. 22. When the fact of marriage is required or offered to be proved before any court, evidence of the admission of such fact by the party against whom the process is instituted, or of general repute, or of cohabitation as married persons, or any other circumstantial or presumptive evidence from which the fact may be inferred, shall be competent.

SECT. 23. Marriages solemnized in a foreign country by a consul or diplomatic agent of the United States shall be valid in this state; and a copy of the record, or a certificate from such consul or agent, shall be presumptive evidence of such marriage.

G.

The following Preamble, Constitution, and Resolutions were adopted by the Convention of Unitarians held at New York, April, 1865:—

Whereas, The great opportunities and demands for Christian labor and consecration at this time increase our sense of the obligations of all disciples of the Lord Jesus Christ to prove their faith by self-denial, and by the devotion of their lives and possessions to the service of God and the building up of the kingdom of his Son:—

Art. 1. Therefore, the Christian churches of the Unitarian faith here assembled unite themselves in a common body, to be known as the National Conference of Unitarian Churches, to the end of reörganizing and stimulating the denomination with which they are connected to the largest exertions in the cause of Christian faith and work.

Art. 2. This National Conference shall be composed of such delegates, elected annually, not to exceed three from any church, including its minister, who shall officially be one, as any of our churches may accredit to it by a certificate of their appointment.

Art. 3. The American Unitarian Association, the Western Conference, and such other theological, academic, or humane organizations in our body as the conference may see fit to invite, shall be entitled to representation by no more than three delegates each.

Art. 4. The conference shall meet annually, at such time as it may designate at its successive annual sessions.

Art. 5. The officers shall consist of a president; six vice-presidents; three secretaries,— an honorary, a recording, and corresponding secretary; and a council of ten, — half ministers and

half laymen, — who shall be elected at each meeting, to hold their office for one year, and until their successors are appointed.

Art. 6. The council of ten shall have charge, during the intervals of the annual sessions, of all business having reference to the interests of the conference, and entrusted it by that body, which is hereby declared a purely advisory one.

Art. 7. The National Conference, until further advised by its experience, adopts the existing organizations of the Unitarian body as the instruments of its power, and confines itself to the recommending to them such undertakings and methods as it judges to be in the heart of the Unitarian denomination.

Art. 8. The foregoing constitution may be amended at any regular meeting of the conference by a vote of not less than two-thirds of the delegates acredited thereto.

The following Resolutions were also adopted by the convention:

Resolved, That we deem it necessary to the spread and triumph of the Kingdom of God in our country and the world, that there should be recognition of fellowship and coöperation between all those various elements in our population which are prepared to meet on the broad basis of Christianity, and that we are prepared to offer and welcome such a coöperation.

Resolved, That the National Unitarian Convention recommend to the churches of our common faith, not yet having contributed to that fund, to unite in completing, at the earliest moment, the sum of $ 100,000 asked for at the late special meeting of the American Unitarian Association, and now in process of collection.

Resolved, That this Convention recommend that a similar sum of $ 100,000 be raised among our churches annually for the purposes of the denomination.

Resolved, That it be urgently recommended to our people to unite in raising, before the first day of June next, the sum of $ 100,000 for the endowment of Antioch College.

Resolved, That we earnestly recommend to the men of wealth in our denomination the urgent claims of our two theological seminaries to ampler endowments.

Resolved, That the Council bring before the churches, at the first moment expedient, the necessity and duty of creating an organ for the denomination, to be called the *Liberal Christian*, upon some plan to be deliberately matured by them.

Resolved, That we recommend a generous support of Western missions through the Western Conference.

Resolved, That this convention give solemn thanks to Almighty God for the success with which he has crowned the arms of the United States in the war for the suppression of a most wicked rebellion, for the near prospect of peace, and for the opening which is made, by the extinction of slavery, for the diffusion of Christianity in its true spirit, as a religion of love, mercy, and universal liberty.

Resolved, That the several delegations, as soon as conveniently may be, shall communicate to their constituents the doings of the convention, and obtain their ratification thereof, and transmit the same, attested by the signatures of the respective delegations, to the corresponding secretary of the conference.

H.

The following Declaration of Faith was adopted by the Congregational Convention assembled at Boston, in June, 1865: —

Standing by the Rock where the Pilgrims set foot upon these shores, upon the spot where they worshipped God, and among the graves of the early generations, we, elders and messengers of the Congregational churches of the United States in National Council assembled, — like them acknowledging no rule of faith but the word of God, — do now declare our adherence to the faith and order of the apostolic and primitive churches, held by our fathers, and substantially as embodied in the confessions and platforms which our synods of 1648 and 1680 set forth or reaffirmed. We declare that the experience of the nearly two and a half centuries which have elapsed since the memorable day

when our sires founded here a Christian Commonwealth, with all the development of new forms of error since their times, has only deepened our confidence in the faith and polity of those fathers. We bless God for the inheritance of these doctrines. We invoke the help of the Divine Redeemer, that, through the presence of the promised Comforter, he will enable us to transmit them in purity to our children.

In the times that are before us as a nation, times at once of duty and of danger, we rest all our hope in the gospel of the Son of God. It was the grand peculiarity of our Puritan fathers, that they held this gospel, not merely as the ground of their personal salvation, but as declaring the worth of man by the incarnation and sacrifice of the Son of God; and therefore applied its principles to elevate society, to regulate education, to civilize humanity, to purify law, to reform the church and the state, to assert and defend liberty; in short, to mould and redeem, by its all-transforming energy, everything that belongs to man in his individual and social relations.

It was the faith of our fathers that gave us this free land in which we dwell. It is by this faith only that we can transmit to our children a free and happy, because a Christian Commonwealth.

We hold it to be a distinctive excellence of our Congregational system, that it exalts that which is more, above that which is less important, and, by the simplicity of its organization, facilitates, in communities where the population is limited, the union of all true believers in one Christian church; and that the division of such communities into several weak and jealous societies, holding the same common faith, is a sin against the unity of the body of Christ, and at once the shame and scandal of Christendom.

We rejoice that, through the influence of our free system of apostolic order, we can hold fellowship with all who acknowledge Christ, and act efficiently in the work of restoring unity to the divided church, and of bringing back harmony and peace among all "who love our Lord Jesus Christ in sincerity."

Thus recognizing the unity of the church of Christ in all the world, and knowing that we are but one branch of Christ's

people, while adhering to our peculiar faith and order, we extend to all believers the hand of Christian fellowship upon the basis of those great fundamental truths in which all Christians should agree. With them we confess our faith in God, the Father, the Son, and the Holy Ghost, the only living and true God; in Jesus Christ, the incarnate Word, who is exalted to be our Redeemer and King; and in the Holy Comforter, who is present in the church to regenerate and sanctify the soul.

With the whole church, we confess the common sinfulness and ruin of our race, and acknowledge that it is only through the work accomplished by the life and expiatory death of Christ, that believers in him are justified before God, receive the remission of sins, and through the presence and grace of the Holy Comforter are delivered from the power of sin and perfected in holiness.

We believe also in the organized and visible church, in the ministry of the Word, in the sacraments of Baptism and the Lord's Supper, in the resurrection of the body, and in the final judgment, the issues of which are eternal life and everlasting punishment.

We receive these truths on the testimony of God, given through prophets and apostles, and in the life, the miracles, the death, the resurrection, of his Son, our Divine Redeemer, — a testimony preserved for the church in the Scriptures of the Old and New Testaments, which were composed by holy men as they were moved by the Holy Ghost.

Affirming now our belief that those who thus hold "one faith, one Lord, one baptism," together constitute the one catholic church, the several households of which, though called by different names, are the one body of Christ; and that these members of his body are sacredly bound to keep "the unity of the spirit in the bond of peace," we declare that we will cooperate with all who hold these truths. With these we will carry the gospel into every part of this land, and with them we will go into all the world, and "preach the gospel to every creature." May He to whom "all power is given in heaven and earth" fulfil the promise which is all our hope: "Lo, I am with you alway, even to the end of the world." Amen.

Resolutions of the Convention on the state of the country, preaching the gospel at home and in foreign lands, education, church-building, and many other religious and benevolent topics may be found in the Congregational Quarterly for July and October, 1865.

I.

Address, Creed, and Covenant of the Church in Andover Theological Seminary.

You now appear, in the presence of Christ and of His people, to make profession of your Christian faith.

We trust that you have well considered the nature of this transaction; and that you perform it with a deep sense of your own weakness, and your unworthiness to utter these vows unto the living God.

Yet, you stand here at Christ's bidding. In His strength you do this thing. We thank God, upon every remembrance of you; being confident that He, which hath begun a good work in you, will perform it unto the day of Jesus Christ.

You will now listen to the Creed adopted by this Church.

We believe in the existence of One only living and personal God, — the Creator, Preserver, and Supreme Ruler of the universe, — who worketh all things according to the counsel of His own will, and whose government is holy, just, and good.

We believe that the Scriptures of the Old and New Testaments were given by inspiration of God; and that they are the only authoritative record of the Divine Will.

We believe that God is revealed in the Scriptures, as the Father, the Son, and the Holy Ghost; these three being in all Divine attributes equal.

We believe that man has fallen from the state of innocence in which he was created; and that consequently all mankind are destitute of holiness, until renewed by the Holy Spirit.

We believe that God so loved the world, that he gave His Only Begotten Son to die for its redemption; that our Lord Jesus Christ took upon himself our nature, and by His obedience, sufferings, and death, made an atonement sufficient for the salvation of all

men; and that forgiveness of sin, and eternal life, are therefore freely offered to all who repent of sin, with faith in Christ.

We believe that, in the same love in which God gave His Son to die, he has also sent the Holy Spirit to make His truth effectual; that, through His gracious influences alone, men are convinced of sin, renewed, and sanctified; and that those who are thus led to repentance, having been chosen in Christ, before the foundation of the world, will be kept by the power of God, through faith, unto salvation.

We believe that for the comfort and strengthening of His followers, and for testimony to His truth, our Lord has established in the world a visible church; that it is the duty of all Christians to enter into covenant with it, professing thus their faith in Christ, and observing the Ordinances of Baptism and the Lord's Supper; that it is the privilege of believing parents to consecrate their children also to God in Baptism; and that all believers, visibly united, though called by different names, are the one body of Christ, sacredly bound to keep the unity of the spirit in the bond of peace.

We believe that there will be a resurrection of the dead, both of the just and of the unjust; that all must give account to Christ of the deeds done in the body; and that the wicked will go away into everlasting punishment, and the righteous into life eternal.

While we declare, in this form, the faith which we believe to have been once delivered to the saints, we do not restrict the freedom of our brethren in the interpretation of God's word.

We reserve to ourselves the right to accept, from those who may hereafter join us, other evangelical forms of faith whenever they shall seem to us necessary to the liberty of the gospel.

Do you accept this as the declaration of your faith?

COVENANT.

You do now solemnly acknowledge the Father, the Son, and the Holy Ghost, to be your God forever. You avow that you love Him supremely. You cheerfully dedicate yourselves to His service. You gratefully enter into covenant with Him, as your most constant and faithful Friend. In humble reliance upon His

aid, you avow your purpose to seek habitual communion with Him in prayer; to give dilligent attention to His Word and Ordinances; to prize, above all things else, the honor of His kingdom; and to adorn the doctrine of God, our Saviour, by a blameless life.

Striving thus to be perfect, as He is perfect, you humbly trust in the atoning blood of Christ for the pardon of your sins; you depend upon the infinite Grace of the Holy Spirit for your sanctification; committing your souls to him that is able to keep you from falling, and to present you faultless before the presence of his glory, with exceeding joy.

You also enter into fraternal covenant with this Church; that you will study its peace, its purity, and its liberty; that you will love and watch over its members as brethren; and that you will so order your life as to do honor to its faith and ordinances by your example.

Do you thus covenant with God and his people?

We, then, the members of this Church, now enter into solemn covenant with you. We affectionately welcome you to fellowship with us, in our communion with our Lord. In His name, we declare you entitled to all the privileges of His church. We promise to watch over you, so long as you continue with us, and faithfully to seek your growth in His likeness, and conformity to His example.

And now, beloved in the Lord, let it be impressed upon your minds that you have entered into obligations the most sacred of your life. You are compassed about with a great cloud of witnesses. These vows will follow you to the bar of God. You will give account of them to Christ, at His coming. May the God of all grace strengthen and keep you! The very God of peace sanctify you wholly! Faithful is He that calleth you. He speaks to you to-day, saying, "Let not your heart be troubled, neither let it be afraid. Not as the world giveth, give I unto you. As the Father hath loved me, so have I loved you. The Father himself loveth you, because ye have loved me. These things have I spoken unto you, that in me ye might have peace. Be of good cheer; I have overcome the world." Amen!

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